IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

- - -

League of United Latin         :
American Citizens, et al.,     :
                               :
      Plaintiffs,              :
                               :
      vs.                      :   Case No.
                               :     3:21-CV-00259
Greg Abbott, et al.,           :
                               :
      Defendants.              :

- - -

DEPOSITION OF SEAN P. TRENDE

- - -

                        Friday, September 2, 2022
                        9:00 a.m.
                        Squire Patton Boggs
                        41 South High Street
                        Suite 2000
                        Columbus, Ohio  43215-6101

- - -
SUSAN L. COOTS, RPR
REGISTERED PROFESSIONAL REPORTER
- - -

Sean P. Trende
September 02, 2022

Page 2

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Page 3

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Page 4

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Page 5

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 1                 I N D E X
 2                    - - -
 3   WITNESS                              PAGE
     SEAN P. TRENDE
 4        Examination                       7
          (By Ms. Chaudhuri)
 5        Examination                      93
          (By Ms. Anderson)
 6        Examination                     150
          (By Ms. Perales)
 7        Examination                     207
          (By M. Brachman)
 8        Examination                     258
          (By Mr. McCaffity)
 9
10                    - - -
     EXHIBITS                           MARKED
11   Plaintiff's Exhibit No. 1             7
     (Trende Expert Report, 7-23-22)
12
     Plaintiff's Exhibit No. 2            69
13   (Duchin Supplemental Report on
     District Alternatives, Local
14   Polarization, and Effectiveness,
     6-20-22)
15
     Plaintiff's Exhibit No. 3            81
16   (Duchin Response to Reports of
     Alford and Trende, 8-1-22)
17
     Plaintiff's Exhibit No. 4            98
18   (Sean Trende - The Lost Majority
     Excerpt)
19
     Plaintiff's Exhibit No. 5           115
20   (Trende Tweet, 8-7-19)
21   Plaintiff's Exhibit No. 6           117
     (Excerpt Barack Obama and
22   The New America)
23   Plaintiff's Exhibit No. 7           119
     (Trende - Real Clear Politics -
24   The Case of the Missing White Voters)
25
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Page 6

Page 7

1            P R O C E E D I N G S
2                   - - -
3              SEAN P. TRENDE,
4   being by me first duly sworn, as hereinafter
5   certified, deposes and says as follows:
6                EXAMINATION
7   BY MS. CHAUDHURI:
8   Q.      Good morning, Mr. Trende.  My name is
9   Pooja Chaudhuri.  I represent the Plaintiff, Texas
10  NAACP, and I'll be your first questioner.
11          Have you ever been deposed before?
12  A.      Yes.
13  Q.      Okay.  So I won't take up your time in going
14  through all of the ground rules and I'll dive right
15  into the substance.
16          I'd like to mark the first exhibit.
17                  - - -
18          And, thereupon, Plaintiff's Exhibit No. 1
19  was marked for purposes of identification.
20                  - - -
21  BY MS. CHAUDHURI:
22  Q.      Do you recognize Exhibit 1?
23  A.      Yes.
24  Q.      And what is it?
25  A.      It is the Expert Report of Sean P. Trende.

Page 8

1   Q.      Did you write this report?
2   A.      Yes.
3   Q.      Okay.  So we'll set it aside and come back
4   to it.
5           How would you describe your field of
6   expertise?
7   A.      Well, "expertise" is a legal term, and
8   I don't know what the lawyers plan on tendering me as
9   an expert witness as.  But I would probably classify
10  it as political science with a focus on American
11  politics, specifically elections --
12  Q.      Okay.
13  A.      -- and political methodology.
14  Q.      Okay.  Thank you.
15          And do you use statistical methods in your
16  field of your specialty?
17          MR. KERCHER:  Object to the form.
18  A.      Yes.
19  Q.      What kinds of statistical methods do you
20  typically use?
21          MR. KERCHER:  Object to the form.
22          You can answer.
23  A.      That's a very broad question.  There are
24  descriptive statistics that just about everyone uses
25  in their day-to-day life, like averages, but

Page 9

1   calculation of confidence intervals for polls.  I keep
2   survey methodology, and part of that involves things
3   like demonstrating the central limit theorem with a
4   lot of large numbers.  Regression analysis is a
5   regular part of the day-to-day work that I do.
6   Manipulating data.  Generating maps.
7           There's probably more, but, again, we're
8   talking about 11 years at this job and a couple other
9   jobs in a variety of contexts.
10  Q.      Okay.  Thank you.
11          Can you turn to Page 7 of Plaintiff's 1 of
12  your report.  So in Part Four, which is titled Data
13  Relied Upon in Construction of Data Sets, do you see
14  that section on Page 7?
15  A.      Yes.
16  Q.      And, here, you list -- the bullet points are
17  where you list data that you relied on, right?
18  A.      Yes.
19  Q.      Did you rely on any of the raw data that was
20  turned over by Dr. Moon Duchin?
21  A.      No.
22  Q.      Do you recall relying on any of Dr. Duchin's
23  computer code?
24  A.      No.
25  Q.      Is there anything else -- any other data

Sean P. Trende
September 02, 2022

Page 10
1  that's not mentioned in these bullet points that you
2  relied on?
3  A.       Not that I can think of as I sit here.  We
4  may discover some as we work through the report.
5  Q.       Okay.  Did you perform any statistical
6  analysis on Dr. Moon Duchin's data?
7           MR. KERCHER:  Object to the form.
8           You can answer.
9  A.       I didn't review her data so I didn't do
10  anything directly with her data.
11  Q.       Okay.  Thank you.
12           Let's turn to Page 41 of your report.  So
13  here, the second paragraph, second sentence, you
14  write, "Rather than using Dr. Duchin's program, I rely
15  on Sequential Monte Carlo developed by Kosuke Imai and
16  implemented through the redistricting Package R."
17           Is that a general approximation of -- Do you
18  disagree with that reading, that sentence?
19  A.       It's the "redist" package, not the
20  redistricting package; but otherwise, that's correct.
21  Q.       And I am not a statistician; you are.  If
22  I use anything, you know, incorrectly, please let me
23  know.
24           So you used SMC rather than Dr. Duchin's
25  program.  Do you know what computer program Dr. Duchin

Page 11
1  used to run ensembles?
2  A.       It would be easier if I had her report, but
3  I believe she uses GerryChain.
4  Q.       Are you aware of a computer language called
5  Python?
6  A.       Yes.
7  Q.       Any reason for you to disagree if
8  I represented to you that Dr. Duchin uses Python?
9           MR. KERCHER:  Object to the form.
10           You can answer.
11  A.       No reason to disagree.
12  Q.       So Dr. Duchin provided the State with her
13  Python files for her ensembles.  Did you ever review
14  those Python files?
15  A.       Yes.
16  Q.       And what was the extent of your review?
17  A.       I looked through the files to see what was
18  contained in them to get a sense of what it was that
19  she was doing.  And that is the extent of it.
20  Q.       Okay.  And how did you then use your review
21  of her Python files to conduct your analysis?
22  A.       I didn't.
23  Q.       Okay.  So you just reviewed it to get an
24  understanding of what she did?
25  A.       That's right.

Page 12
1  Q.       Okay.  And do you use Python in your own
2  work?
3  A.       I know enough Python code to get myself in
4  trouble.  It's not -- it's not my go-to language that
5  I use regularly.
6  Q.       And what is your go-to language?
7  A.       I typically do statistical programming in --
8  probably 90 percent in R, just the letter "R," and
9  10 percent in Stata, S-T-A-T-A.
10  Q.       Okay.  So SMC, can you tell me what that is?
11  A.       Yes.  Sequential Monte Carlo is an algorithm
12  that's used to generate random maps.  It's part of a
13  family of approaches to the -- what we call the
14  "ensemble method" of evaluating political
15  gerrymanders.
16  Q.       And is it a program that's already written?
17  A.       Yes.  Well, it's part of a package that's
18  available in R, the "redist" package.
19  Q.       So you don't have to write your own
20  algorithms, right, to use SMC?
21  A.       You have to do -- Well, you have to do quite
22  a bit of coding to get it to work; but the actual SMC
23  command is not something I wrote.  No.
24  Q.       Okay.  So when you're using SMC are there
25  certain parameters that you -- that are in SMC that

Page 13
1  you can control for?
2  A.       Yes.
3  Q.       Okay.  Are they typically called target
4  distribution parameters?
5  A.       I don't know that they're typically referred
6  to as that, but I understand what that is.  There's,
7  like, a 200-page user manual to SMC, and I don't know
8  if that specific phrase appears in it, but I would
9  have to see the user manuals.
10  Q.       Okay.  So you mentioned that, you know,
11  you're familiar with the concept of the target
12  distribution parameters.  Can you tell me what that
13  means to you?
14  A.       So the target distribution is what you're
15  attempting to sample from.  Some of the earlier
16  approaches to random generated maps, we call it the
17  Constructive Monte Carlo approach, the Jowei Chen
18  approach, J-O-W-E-I, C-H-E-N, has a problem that it
19  doesn't specify the distribution from which it's
20  sampling.  So one of the benefits of these newer
21  methods is that they do, and so you have a higher
22  degree of confidence that they sample -- that they
23  cover the entire distribution; that if you ran them
24  long enough, you would, in fact, get every available
25  map within a certain set of parameters.

Sean P. Trende
September 02, 2022

Page 14
1    So the target distribution, which is written
2  down in the McCarton NMI paper, is the distribution of
3  maps from which you're sampling.
4  Q.    Okay.  So you said that you can set certain
5  parameters to, ultimately, you know, get you to the
6  target distribution.  What were the parameters that
7  you set on SMC?
8  A.    I would have to see my code.
9  Q.    So sitting here, you don't recall what
10 factors you put into the code?
11       MR. KERCHER:  Object to the form.
12 A.    I believe I used a compactness parameter.
13 But, beyond that, I would have to see my code.
14 Q.    Okay.  Do you recall, you know, not whether
15 you used the parameter, but can contiguity be a
16 parameter in the code?
17 A.    Because of the way the SMC algorithm works,
18 the districts are all contiguous.
19 Q.    Can you put in CVAP, Citizen Voting Age
20 Population, threshold to be a parameter?
21 A.    Yeah.  There's a command that I think I used
22 in the Maryland case that allows you to guarantee a
23 certain number of districts that would be drawn -- or
24 the algorithm would prefer and put a weight on
25 districts that produce a certain number of outcomes

Page 15
1  with a given VAP is how we used it, but I don't know
2  why it couldn't be assigned to CVAP.
3  Q.    Do you recall if you used CVAP when you ran
4  your algorithm?
5  A.    I don't believe I did.
6  Q.    Can partisan vote share threshold be a
7  parameter that you can put into the code?
8  A.    Again, I would have to see the user manual,
9  if you will, for the redist package.  But I don't see
10 why you couldn't set -- call partisan vote share
11 CVAP, or Voting Age Population, and the program
12 wouldn't be able to tell the difference.
13 Q.    And did you use that parameter when you were
14 running your simulations?
15 A.    No.
16 Q.    Okay.  So as of now, you're sure that you
17 just used compactness; is that right?
18       MR. KERCHER:  Object to the form.
19 A.    I don't think I said that.
20 Q.    So earlier, and correct me if I'm wrong, you
21 said that you likely used compactness as a parameter
22 and that you would have to check your code to see if
23 you used any other parameters.  Do you agree with that
24 representation?
25 A.    Yes.

Page 16
1  Q.    Okay.  So for the parameters, you can give
2  them different weights; is that right?
3        MR. KERCHER:  Object to the form.
4  A.    That's correct.
5  Q.    Okay.  How did you decide -- How much weight
6  did you give to compactness?
7  A.    I would have to look at the code, but I
8  believe it was compactness of 1.
9  Q.    Okay.  So the row exponent was 1 for the
10 compactness?
11 A.    Yes.
12 Q.    If you turn to Page 41 of your report and
13 looking at the second sentence, and I'll read it for
14 you, it says, "The simulations work best when they
15 control for the legitimate factors upon which the
16 legislature relied when drawing their maps.  This
17 ensures that the simulation sample from the same
18 distribution of maps as the legislature effectively
19 did."
20       So when you wrote that, "The simulations
21 work best when they control for their legitimate
22 factors on which the legislature relied," what did you
23 mean?
24 A.    I mean that if you're trying to draw an
25 inference that race was the predominant factor, which

Page 17
1  Dr. Duchin seems to draw, you want to try to control
2  for everything the legislature is doing.
3  Q.    Okay.  But when you ran your code, again,
4  you ran it race blind and partisan -- and party blind;
5  is that right?
6  A.    Correct.
7  Q.    And is your understanding that Dr. Duchin
8  ran her code race blind and party blind?
9  A.    That's my understanding.
10 Q.    Okay.  Do you recall -- Again, back to the
11 parameters.  Do you recall whether you used any of the
12 default settings in SMC without changing the
13 parameters on the default settings?
14 A.    I would have to see my code.
15 Q.    Okay.  So I just -- Again, I'm not a
16 statistician, but I just want to understand that MCMC,
17 the chain process.  You're familiar with MCMC, right?
18 A.    Yes.
19 Q.    Okay.  And, again, what does that acronym
20 stand for?
21 A.    Markov chain Monte Carl.
22 Q.    So when you run a Markov chain, it gives you
23 an output, right?
24 A.    Yes.
25 Q.    And what is that output?  Is it a number?

Sean P. Trende
September 02, 2022

Page 18

1  A.        It's in numeric form.
2  Q.        Okay.  Does that translate to a plan?
3  A.        So yes.  I mean, the way you phrased the
4  question, Markov's chain Monte Carlo is just a form of
5  a stochastic process that can be used in a bunch of
6  different situations.  In this particular application
7  of redistricting, the Monte Carlo programs do produce
8  a series of districting maps.
9  Q.        Okay.  And so you -- When you run 100,000
10 simulations, that basically means that you're running
11 the chains 100,000 times; is that right?
12 A.        For the SMC approach, that's right.  For
13 some of the other approaches, you would use a burn-in.
14 So a number of stages in the process to get the -- to
15 get the simulation running, but SMC doesn't use
16 burn-ins.
17 Q.        Okay.  So just focusing in on SMC, you're
18 getting 100,000 draws, right, of different plans?
19 A.        You're getting 100,000 draws of plans.
20 Q.        Okay.  And then, in your process, you've
21 analyzed those 100,000 draws.  Are those draws called
22 ensembles?
23 A.        Yes, the draws are called ensembles.
24 Q.        So then you're analyzing the ensembles for
25 different properties; is that right?

Page 19

1  A.        That's right.
2  Q.        In your report -- And we'll hone in on, you
3  know, specific -- some of your dotplots.  But in your
4  report, you analyzed these ensembles from the
5  perspective of minority CVAP share, right?
6  A.        That's one of the things I did.  Yes.
7  Q.        Okay.  And you analyzed, again, these draws
8  from the perspective of the democratic vote share in
9  the Biden/Trump election, right?
10 A.        That's correct.
11 Q.        The 100,000 ensembles that you get, that's a
12 sample, right?
13 A.        It's one ensemble.  But the 100,000 maps you
14 get are samples.
15 Q.        Okay.  Thank you.
16           Is it possible to have biases in a sample?
17 A.        Have what?
18 Q.        Biases.
19 A.        You would have to define that term.
20 Q.        How do you know that your sample is not
21 skewed?
22           MR. KERCHER:  Object to the form.
23 A.        In what sense?
24 Q.        How do you know that your sample contains,
25 you know, plans that are not -- highly not compact,

Page 20

1  for example?
2           MR. KERCHER:  Object to the form.
3  A.        Because that's what the SMC algorithm is
4  supposed to do.  Dr. Imai has disclaimed SMC, then
5  maybe it doesn't.
6  Q.        So there is a connection to what you put in
7  the initial parent parameters that define the
8  distribution, and that's what gives you a control on
9  your sample, right?
10 A.        That's right.
11 Q.        Okay.  How did you know that your sample was
12 representative?
13           MR. KERCHER:  Object to the form.
14 A.        Again, this is something that has been used
15 in redistricting litigation, and the paper, which is
16 probably -- from probably the second-most prominent
17 political methodologist in political science, has been
18 run and tested to ensure it produces a representative
19 sample given certain parameters.
20 Q.        Okay.  So a representative sample would be
21 close to what the set of plans that the legislature
22 might have considered, right?  Strike that.
23           A representative sample in this case would
24 have to be close to the set of plans that the Texas
25 legislature considered, right?

Page 21

1           MR. KERCHER:  Objection to the form.
2  A.        That's what you would shoot for.  Yes.
3  Q.        Did you know what parameters the Texas
4  legislature looked at in drawing their plans?
5  A.        No, but I wasn't trying to ensure that my
6  ensemble drew from the same distribution as the Texas
7  legislature.
8  Q.        Okay.  What distribution were you trying to
9  ensure that your ensemble drew from?
10 A.        I was trying to see if I was drawing from
11 the same ensemble as Dr. Duchin.
12 Q.        Got it.  Okay.
13           How were you able to verify that your
14 ensemble was drawing from the same distribution as
15 Dr. Duchin?
16 A.        I compared our outputs and they were
17 consistently the same.
18 Q.        Okay.  But you didn't know what parameters
19 she used, right?
20 A.        No.  Like I said, I compared our outputs
21 that we put out in the case; they were the same
22 outputs.
23 Q.        Okay.  So other than looking at similarities
24 or inferring that your distribution and her
25 distribution were the same, did you do anything else

Sean P. Trende
September 02, 2022

Page 22

1  to verify that your sample essentially looked good?
2        MR. KERCHER:  Object to the form.
3  A.      Well, understanding how the SMC algorithm
4  works and what it's supposed to produce, yes.  And
5  I actually do think, at least for the first run or
6  two, I looked at the compactness of the sample
7  compared to the compactness of the legislative maps.
8  But, even then, the legislative maps have some odd
9  districts, so I don't know.  I'm pretty sure I did
10  that, though.
11  Q.      Again, MCMC, it gives -- it's a
12  probabilistic model, right?
13  A.      That's right.
14  Q.      And is there a level of uncertainty in
15  probabilistic models?
16  A.      By definition.
17  Q.      Okay.  So when you ran a chain and it gave
18  you an output, did you conduct any error rate
19  analysis?  Sorry.  Correct me.  My terminology might
20  be off.  Did you conduct any -- Did you look at the
21  error rates between that output and your target
22  output?
23        MR. KERCHER:  Object to the form.
24  A.      Yes.
25  Q.      Do you report those error rates anywhere in

Page 23

1  your report?
2  A.      No, because I was comparing to Dr. Duchin's
3  output.
4  Q.      Okay.  Did you look at any standard
5  deviations of your outputs and compare them to the
6  target distribution?
7  A.      No.
8  Q.      So is it fair to say that you don't dispute
9  Dr. Duchin's methods with respect to ensembles?
10        MR. KERCHER:  Object to the form.
11  A.      Yeah.  In the report, I don't give any
12  objections to the GerryChain approach.
13  Q.      Okay.  And then is it fair to say that you
14  don't dispute the results of Dr. Duchin's simulation?
15        MR. KERCHER:  Object to the form.
16  BY MS. CHAUDHURI:
17  Q.      Is that right?
18  A.      Yeah.  I wasn't asked to look at the
19  GerryChain model itself and don't have anything in the
20  report objecting to it.
21  Q.      Okay.  So your only dispute as to her
22  ensemble analysis is the interpretation of her
23  outputs, right?
24        MR. KERCHER:  Object to the form.
25  A.      Well, I don't know that that's quite right

Page 24

1  because if the legislature had partisan goals, she
2  should have controlled for those.  But, beyond that,
3  that's the extent of my -- beyond that, it's an
4  objection about interpretation.
5  Q.      Okay.  So when you say that she should have
6  controlled for partisan goals, are you saying that she
7  should have put in partisanship as a parameter in her
8  algorithm when she ran it?
9        MR. KERCHER:  Objection to the form.
10  Misstates his testimony.
11  A.      The legislature was trying to draw
12  25 Republican districts, and that was a goal.  And
13  she's trying to, within that universe, control for --
14  and I should say sufficiently Republican districts.
15  She's trying to determine whether race was the
16  predominant factor.  Yes, she should have controlled
17  for 25 sufficiently Republican districts.
18        The whole way that this works is by ruling
19  out alternative explanations.  And if you don't
20  control for it, you don't really rule out the
21  explanation.
22  Q.      Uh-huh.  So when you -- I'm just trying to
23  understand.  When you say "control for it," is it
24  basically analyzing the ensembles for a particular
25  property?  Is that what you mean by "control for it"?

Page 25

1  A.      So there's a couple ways you can do it.
2  Q.      Okay.
3  A.      You can do it by controlling the parameters
4  to ensure that you are doing the same thing the
5  legislature is doing.  Or you can -- Well, actually,
6  I guess three ways.  Can you freeze certain districts
7  in place.
8  Q.      Uh-huh.
9  A.      So, for example, in the Maryland case, when
10  we were trying to demonstrate that politics was the
11  explanation, one of the approaches we used for the
12  Voting Rights Act District -- I guess in New York as
13  well -- was to just take the precincts for their
14  Voting Rights Act Districts out of the ensembles to
15  guarantee that the map would perform at least as well
16  as the enacted -- the ensembles would perform at least
17  as well as the Enacted Map on the Voting Rights Act.
18        Or -- and this was another thing that was
19  done in Maryland -- you can discard maps that don't
20  achieve a certain target for Voting Rights Act
21  performance.
22  Q.      Okay.
23  A.      I shouldn't say "discard."  You can filter
24  them from your analysis.
25  Q.      Got it.  And if you analyze the ensemble for

Sean P. Trende
September 02, 2022

Page 26

1  certain properties, say you analyze the ensemble for
2  having certain partisan properties, is that a way to
3  control for partisanship?
4  A.      It's a way to implement some kind of
5  control.
6  Q.      Is that what you did when you did your
7  dotplots?
8  A.      No, because I want my dotplots to look
9  roughly like Dr. Duchin's boxplots.
10 Q.      Why don't we turn to Page 42 and 43 of your
11 report.  So is it -- And it's a boxplot; is that what
12 I should call it?
13 A.      Mine are dotplots; Dr. Duchin's are
14 boxplots.
15 Q.      The dotplot on the left, figure 26, and the
16 dotplot on the right, figure 27, are these based on
17 the same ensembles?
18 A.      Yes.
19 Q.      The dotplot on the left, you're looking at
20 the CVAP, the percent minority properties of your full
21 ensemble, right?  And you're plotting them in the
22 graph?
23         MR. KERCHER:  Objection to the form.
24         Counsel, could you refer to the figure
25 number to make sure that his left and right are the

Page 27

1  same as yours?
2  BY MS. CHAUDHURI:
3  Q.      Sure.  I'm referring to figure 26.
4  A.      Can you repeat the question?
5  Q.      So figure 26, you're looking at the minority
6  CVAP share in the ensemble, right?
7  A.      Correct.
8  Q.      Okay.  In figure 27 on Page 43, you're
9  looking at the Democratic vote share of the different
10 maps in the ensemble, right?
11 A.      That's right.
12 Q.      And you're looking at the seven-district
13 Dallas/Fort Worth congressional cluster of districts
14 in both of these figures; is that right?
15 A.      That's correct.
16 Q.      Okay.  And if you look at figure 26, there
17 are black dots in each of the -- Are they bars?  Is
18 that what I should call them?
19 A.      If you call them -- if you call the columns
20 bars, I'll know what you're referring to.
21 Q.      Okay.  So the black dot represents the
22 State's Enacted Plan; is that right?
23 A.      Yes.
24 Q.      Okay.  And if the black dot is higher on one
25 extreme of the column, then you would say the black

Page 28

1  dot is an outlier, right?
2  A.      Yes.
3  Q.      Okay.  So you're analyzing the same
4  ensemble, but with respect to percent minority in
5  figure 26 and percent Democratic in figure 27, are
6  there any overlaps between the map -- the maps that
7  you've considered?  Does that make sense?
8         MR. KERCHER:  Object to the form.
9  A.      It does not.
10 Q.      Okay.  I'll come back to that.
11        If you go to the bottom of Page 43, the last
12 sentence, it says, "Republicans sought to take an area
13 where they would naturally win two or three seats and
14 turn it into one where they win four."
15        Can you tell me, in figure 27, which
16 district is the fourth district that you're referring
17 to?
18 A.      So, first off, that's not the last sentence.
19 The last sentence has a preface to it.  "But here, the
20 data and history are more consistent with the
21 political story."
22        The fourth Republican district is the fourth
23 column that is around 45 percent Donald Trump.  So
24 about 7 percentage points more Republican than the
25 country as a whole.  I believe that would make it

Page 29

1  District 24.
2  Q.      So it's numbered 4 in figure 27, right?
3  A.      That's correct.
4  Q.      So based on the fourth column, is it fair to
5  say that the State's Enacted Plan for District 4 is
6  more extreme in its Republican Party vote share than
7  most of the other plans generated in the distribution?
8         MR. KERCHER:  Object to the form.
9  A.      It's more Republican than almost all of the
10 plans generated by the ensemble.
11 Q.      And that is visually represented by the
12 black dot being at the bottom of the red portion of
13 the column, right?
14        MR. KERCHER:  Object to the form.
15 A.      That's correct.
16 Q.      Okay.  And based on that, you've concluded
17 that partisan interests predominated and that it
18 wasn't a politically neutral process, right?
19        MR. KERCHER:  Object to the form.
20 A.      I don't know that I say that anywhere in my
21 report.
22 Q.      So if you go to the top of Page 43, above
23 the graph, it says, "The Enacted Map, however,
24 produces four districts where Trump won in excess of
25 55 percent of the vote.  In other words, the mapmakers

Sean P. Trende
September 02, 2022

Page 30
1  did create a Republican district where we wouldn't
2  expect a political-neutral process to create one."
3  A.       Yes.
4  Q.       Do you see that?  Okay.
5           So what was your basis for saying that with
6  respect to the Dallas/Fort Worth congressional
7  districts?
8  A.       Well, if you look on the ensembles, there
9  are always three districts generated that Donald Trump
10 won with less than 55 percent of the vote, and there
11 are always two districts generated before
12 Donald Trump -- Well, I shouldn't say always.  There
13 is always one district generated where Donald Trump
14 wins in excess of 45 percent of the vote.
15          There are usually two districts generated
16 where Donald Trump wins in excess of 45 percent of the
17 vote.  There are usually -- the third district would
18 be a district that Donald Trump won, but with less
19 than 45 percent of the vote.  Yet, the Enacted Map
20 produces a third such district.
21          And then, in the fourth ordered district, it
22 typically produces a district that Joe Biden won, and
23 it almost always produces a district that Joe Biden
24 -- that Donald Trump received less than 55 percent of
25 the vote.  So they under -- using the ensembles, a map

Page 31
1  drawn without respect to politics would not tend to
2  create -- We would not expect a map drawn without
3  respect to politics to create four districts where
4  Donald Trump won in excess of 55 percent of the vote.
5           I think in that answer I sometimes said
6  Donald Trump at 45 percent.  This is Joe Biden vote
7  share, so it would be Donald Trump at 55 percent.
8  Q.       Okay.  So you're saying if the process was
9  politically neutral, then it would be more likely that
10 that fourth district would have a higher Democratic
11 vote share, right?
12 A.       I said we would expect --
13 Q.       Okay.
14 A.       -- a politically neutral process to produce
15 a higher Democratic vote share.
16 Q.       Okay.  I think I understand.  Thank you.
17          So I have some questions about figure 26 on
18 Page 42.  If you look at the first paragraph, the
19 third sentence that starts with the word "Note."  You
20 say, "Note, too, that in both Dr. Duchin's and my
21 simulations, the Enacted Plan produces the same number
22 of minority CVAP majority districts as race- and
23 politics-blind simulation expects.  In other words, a
24 fourth majority CVAP district is not naturally
25 occurring."

Page 32
1           So when you say a "fourth majority CVAP
2  district," are you still looking at District 4 in
3  figure 26?
4  A.       I think that's actually the fourth sentence,
5  not the third.
6  Q.       Thank you.
7  A.       Just because this transcript is going to
8  follow me around for the rest of my life.  Sorry if
9  that's pedantic.
10 Q.       No, no, no.  Correct me if I'm wrong.
11          So yes, the fourth sentence.
12 A.       Yeah.  And that is, obviously, in
13 simulation.  That's right, yeah.  That's what those
14 sentences say.
15 Q.       When you say that "A fourth majority CVAP
16 district is not naturally occurring," what do you mean
17 when you say that?
18 A.       So if you look at my simulations and
19 Dr. Duchin's simulations, the fourth district tends
20 not to be majority CVAP.  So if you're just drawing
21 race- and politics-blind maps, you're not going to
22 tend to get a fourth majority/majority CVAP district
23 in the Dallas/Fort Worth area using the seven
24 districts that Dr. Duchin has selected.
25 Q.       Okay.  If you look at the black dot on the

Page 33
1  fourth column, again, I'm looking at figure 26, the
2  black dot is towards the bottom of the red portion of
3  the column.  Do you see that?
4  A.       Yes.
5  Q.       Okay.  Does that mean that the black dot
6  State's Enacted Plan is more extreme than the rest of
7  the plans in the distribution?
8           MR. KERCHER:  Object to the form.
9  A.       No.
10 Q.       It doesn't?  If the black dot is lower in
11 the column, it doesn't mean that it's more of an
12 outlier than all of the plans that are the dots above
13 it?
14          MR. KERCHER:  Object to the form.
15 A.       The fourth column -- the fourth dot is
16 within the distribution, so it is not more extreme
17 than all of the plans of the ensemble.
18 Q.       But it's towards the bottom of the
19 distribution.  Does that make any kind of difference?
20          MR. KERCHER:  Object to the form.
21 A.       You asked me if it was more extreme than all
22 of the plans in the distribution.  That is untrue.
23 There are obviously plans with even lower CVAP than
24 the distribution; so it's flatly wrong to say it's
25 more extreme than all of the plans in the ensemble.

Sean P. Trende
September 02, 2022

Page 34

1  Q.        Okay.  Well, then, how do I tell what
2  percentile the black dot represents?  What percentile
3  within the distribution?
4  A.        If you're interested in that, you can look
5  at the code that I produced which will generate the
6  ensembles, and you can pull that information from the
7  code.  You could look at a boxplot.  My experience
8  from the Maryland case is that normal human beings see
9  a boxplot and their eyes glaze over, given the
10 expletive I received from the judge when the boxplot
11 went up.
12 Q.        Oh, no.  Uh-oh.
13 A.        So I shouldn't say "expletive."  She didn't
14 curse at me, but she was very dismayed.  So Dr. Imai
15 has also used dotplots, and it's a built-in feature of
16 the redist package.  I find that this is a more
17 intuitive way to produce the data, even if you do lose
18 some visually -- some information in the process.
19 Q.        So can you eyeball the percentile from your
20 dotplot?
21 A.        No.
22 Q.        Okay.
23 A.        But the data are available if you're
24 interested in it.
25 Q.        I'm just trying to understand.  You say a

Page 35

1  majority CVAP district is not naturally occurring.
2  But my question is how do you know that the State's
3  Enacted Plan is not extreme in how low the minority
4  CVAP is?
5          MR. KERCHER:  Object to the form.
6  A.        Those are two concepts that aren't really
7  related.  The statement about it being naturally
8  occurring or not naturally occurring has to do with
9  where the center of the distribution is.  An inference
10 about the dotplot or the Enacted Map has to do with
11 where that black dot is.
12 Q.        So wouldn't an inference that the State's
13 Enacted Plan had a lower CVAP share than all of the
14 other plans in the distribution, wouldn't that tell
15 you something about whether the process was racially
16 neutral or not?
17          MR. KERCHER:  Object to the form.
18 A.        No, because you aren't also controlling for
19 politics, which in a state -- As I say on Page 43, "In
20 a world where race and politics often correlate, it's
21 sometimes difficult to sort the two out.  What to do
22 in that situation is a question for lawyers to argue
23 about and judges to decide."
24 Q.        Okay.  So you're saying that it's not
25 necessarily helpful to know whether this -- where in

Page 36

1  the distribution the State's Enacted Plan falls with
2  respect to race?
3          MR. KERCHER:  Objection.  Form.
4  A.        I didn't say that.
5  Q.        Okay.  So stepping back, again, in some of
6  these dotplots you've shown that the State's Enacted
7  Plans were racial outliers, and figure 27 -- I'm
8  sorry.  That the State's Enacted Plan were partisan
9  outliers, and figure 27 represents that, right?
10          MR. KERCHER:  Object to the form.
11 A.        Yes.  That is one of the things that figure
12 27 shows.
13 Q.        Okay.  And in some of your dotplots, you've
14 also shown that the State's plan are racial outliers,
15 right?
16          MR. KERCHER:  Object to the form.
17 A.        Right.  And the point here is that, in a
18 world where race and politics correlated, you're going
19 to tend to get both; something that appears as a
20 racial outlier will also appear as a political
21 outlier.
22          Dr. Duchin's report only showed that the
23 maps were racial outliers.  I wanted to show that they
24 were political outliers as well, not to contest what
25 her findings are.

Page 37

1          I say, on Page 43, which, for legal
2  purposes, which is not what I'm here to decide.  For
3  legal purposes, I will let you all fight over that,
4  and the judge decide, which is the proper thing for an
5  expert to do I believe.
6  Q.        Uh-huh.  So your maps -- your ensemble
7  analysis doesn't necessarily rule out race as a
8  motivation -- as motivation of the legislature, does
9  it?
10          MR. KERCHER:  Object to the form.
11 A.        Well, as you stated at the beginning, it's a
12 probabilistic inquiry so you never rule out anything
13 with statistics.  But what it does show is that
14 politics -- the maps are also political outliers
15 consistent with political gerrymandering.
16 Q.        Okay.  But it's possible that race may have
17 been a driving force behind the legislature's -- their
18 Enacted Maps, right?
19          MR. KERCHER:  Object to the form.  Asked and
20 answered.  Misstates his testimony.
21 A.        You know, I'm not here to talk about all of
22 the things that could be possible.  I know there is an
23 entire universe of fact testimony that's going on in
24 this case that I am blissfully unaware of.
25          All that these simulations show and are

Sean P. Trende
September 02, 2022

Page 38

1  really meant to show is that these maps are also
2  political outliers, without disputing the data that
3  Dr. Duchin shows.
4  Q.        Did you look at the correlation between
5  politics and race?
6          MR. KERCHER:  Object to the form.
7  A.        I did not.  I believe Dr. Kousser estimated
8  it at like .67, but I don't know if that's right or
9  not.
10  Q.        Did you look at the racial features of plans
11  that were more partisan in your ensemble?
12          MR. KERCHER:  Object to the form.
13  A.        No, because I think there were only a
14  handful of plans that are as -- Matter of fact, there
15  are no plans that match the partisanship of what the
16  legislature did.
17  Q.        Can you elaborate on that?  What do you mean
18  by that?
19  A.        Well, if you look at Districts 5 and 6, the
20  Enacted Plans fall completely outside of the
21  distribution of the drawn maps.  So I cannot pull out
22  maps from the ensemble that reflect the political
23  distribution of maps that the legislature enacted.
24  Q.        Sorry.  Which figure are you referring to?
25  A.        This is in reference to figure 27.

Page 39

1  Q.        Okay.  And with respect to 5 and 6, can you
2  repeat what you said?
3  A.        Yes.  You can see from looking at the
4  Enacted Plan compared to the ensemble.
5  Q.        Uh-huh.
6  A.        And I'm not 100 percent sure about 5 because
7  I forgot to bring my readers, but I'm sure about 6.
8  Those districts are more Democratic than anything that
9  appears in the ensemble.  So you can't really -- And
10  even with respect to District 4, there is only a --
11  there are only a handful of maps that are Republican
12  as that district is.
13          So you can't really filter out just the
14  districts -- just the maps that produce four districts
15  where Donald Trump won in excess of 55 percent of the
16  vote and where that third district is almost
17  60 percent Trump, which is what pushes those other two
18  down or up on the map, because they don't exist in the
19  ensemble.
20  Q.        Okay.  But if you go to column six in
21  figure 26, the black dot is way above the blue portion
22  of the column, right?
23          MR. KERCHER:  Object to the form.
24  A.        It's above the -- I don't know about way
25  above, and I don't think I used that with respect to

Page 40

1  any of the columns.  If I did, I apologize.  But
2  I don't know about "way above."  It is above the
3  distribution.
4          But my point is that, in a world where race
5  and politics are correlated, when you produce two
6  districts that are political outliers, you're also --
7  there is a good chance you're going to produce a
8  district that's a racial outlier inadvertently, even
9  if you are drawing blind to race.
10  Q.        Okay.  Couldn't it be evidence -- couldn't
11  your ensembles also be evidence that race was more of
12  a factor than partisanship, if it's both an outlier in
13  terms of race and partisanship?
14          MR. KERCHER:  Object to the form.
15  A.        Again, "evidence" is a legal term of art.
16  I don't know how people are going to use this in court
17  or would intend to use it.  My guess is -- or my sense
18  is no because the ensembles produced at the end of the
19  day produced the same number of minority majority
20  districts as you would expect from a race-drawn plan.
21          So there are the same number of districts
22  where the minority group would tend to be a majority
23  in it.  But there are not the same number of districts
24  where either Donald Trump won or where Donald Trump
25  performed very well.

Page 41

1          I think looking at this data, politics is a
2  better example or a better explanation for what went
3  on, but I suppose you could try to offer it up as
4  evidence for a racial claim.
5  Q.        Okay.  Did you study, again, a subset of
6  districts from your ensemble that were Republican
7  leaning?
8  A.        No, because the maps -- the Enacted Plans
9  don't produce just Republican-leaning districts.  They
10  produced four districts that Donald Trump won
11  overwhelmingly, which is the goal.
12  Q.        Okay.  So to understand how race and
13  politics correlate, would it have been helpful to
14  control your ensemble and your 100,000, you know,
15  simulations and only look at the Republican-leaning
16  districts?
17          MR. KERCHER:  Object to the form.
18  A.        No, because the district didn't try to
19  draw -- or the Republicans didn't draw a map where
20  Donald Trump or Joe Biden won 51 percent of the vote,
21  which would be a Republican-leaning district, given
22  that he won naturally with 52 percent of the vote.
23  And that's understandable.
24          I can -- You know, if you draw a
25  50.001 percent Trump district in the Dallas suburbs

Sean P. Trende
September 02, 2022

Page 42
1  today, given trends there, there's a reasonable chance
2  that it is going to be a Biden district by the end of
3  the decade.  You want to build in a cushion when
4  you're gerrymandering.
5          So I think looking at districts where
6  Donald Trump won 50.001 percent of the vote isn't --
7  doesn't shine a whole lot of light on things,
8  especially since, given that race and politics are
9  correlated, pushing a district down to 50 or
10  45 percent Biden and pushing that third district down
11  to 40 Biden is going to pop things up on the other
12  side, probably both with respect to race and politics.
13  So I don't think looking at a bunch of 50.001 percent
14  Trump districts is going to illuminate much.
15  Q.        Okay.  So, hypothetically speaking, if --
16  Again, you know, tell me if you don't understand my
17  question.  But if you control your ensemble again for
18  just Republican-leaning plans, and then you look at
19  whether those -- the State's Enacted Plan, as compared
20  to the Republican-leaning plans, and you want to value
21  whether there are extremes racially or not, would that
22  allow you to test your hypothesis whether the process
23  was racially neutral or not?
24          MR. KERCHER:  Object to the form.
25  A.        As someone who studies American politics in

Page 43
1  elections, and whose job is to evaluate the
2  competitiveness of the elections, I don't believe that
3  would be particularly illuminative.
4          Perhaps someone looking at these data who
5  doesn't have a lot of experience evaluating elections
6  might think that's a sensible way to go about it; but
7  it is not because when -- what the legislature does
8  when it creates a 45 percent -- Well, first off, if
9  you're looking at Republican-leaning districts, you
10  would want to include districts up to where Biden won
11  at least 52 percent of the vote which is his
12  nationwide vote total.
13          But when you're pushing Joe Biden's vote
14  share down to 45 percent, you're not just creating a
15  Republican-leaning district; you're creating a solidly
16  Republican district.  And so looking at these
17  politically marginal districts wouldn't illuminate
18  much for you.
19  Q.        You wouldn't learn anything if you looked at
20  the racial features of those districts?  You're saying
21  you wouldn't learn anything about them?
22          MR. KERCHER:  Object to the form.  Misstates
23  his testimony.
24  A.        You would learn a lot about those lean -- or
25  marginally Republican districts.  You wouldn't learn a

Page 44
1  lot about the Enacted Plan because it doesn't create
2  marginally Republican districts.
3  Q.        But the State's Enacted Plan could be
4  compared to any subset of plans, right?  Whether
5  they're Republican-leaning or whether they're
6  Democrat-leaning.  So I don't understand; why couldn't
7  you compare the State's Enacted Plan and look at
8  whether the State's Enacted Plan was racially extreme
9  as compared to plans that are more solidly
10  Republican leaning?
11          MR. KERCHER:  Object to the form.
12  A.        You can compare the Enacted Plan to any
13  subset of the ensembles that you wish.  My point is
14  that if you want to actually draw some inferences
15  about the Enacted Plan by controlling, you have to
16  look at a subset of plans that are like the Enacted
17  Plan.  And a subset of plans that has 50.001 percent
18  Trump districts is not like -- especially when you're
19  in the Dallas/Fort Worth suburbs is not like the
20  Enacted Plan.  You're comparing apples to oranges in
21  that situation, as someone who evaluates elections for
22  a living.
23  Q.        Okay.  Now, I mean, again, you're the
24  expert; I'm just trying to understand.
25  A.        We've been going about an hour.  Can we take

Page 45
1  a break?
2  Q.        Yeah.  Sure.  Want to take a ten-minute
3  break?
4  A.        Yeah.  Sure.
5          (Recess taken.)
6          MS. CHAUDHURI:  Back on the record.
7  BY MS. CHAUDHURI:
8  Q.        So, Mr. Trende, you're aware of the
9  Ecological Inference method?
10  A.        Yes.
11  Q.        In your own words, can you describe to me
12  what "Ecological Inference" means?  I know it's a
13  broad question.
14  A.        Yes.  So one of the problems we have with
15  data analysis, particularly with respect to elections,
16  is that -- It's not really a -- it's a problem with
17  respect to elections analysis; it's not really a
18  problem.  But we have secret ballots, which is good,
19  but we don't know how individuals voted.  And the
20  question is often, Okay, you know, we want to know how
21  members of different groups vote.
22  Q.        Uh-huh.
23  A.        And one solution is just talk to them,
24  conduct an exit poll or some of these other polls; but
25  a lot of times we don't have that available.

Sean P. Trende
September 02, 2022

Page 46

1        So one way to do that was -- two things were
2    developed at about the same time in the mid 1900s.
3    The first is the Method of Bounds -- And all of this
4    is necessary to answering the question about
5    Ecological Inference.
6        One of these is the Method of Bounds, which
7    is you can look at a precinct, and -- Well, I guess,
8    the other issue is that if you're just looking at
9    precinct-level data, you can have a district that is
10   70/80 -- or 70/30 percent African American, and vote
11   70/30 Democrat, but you don't know whether all of the
12   African Americans are voting Democrat, or, you know,
13   90 percent are, and whatever the -- it would be, like,
14   20 percent of the non-African Americans are voting
15   Democrat as well.
16       So what the Method of Bounds does -- That's
17   called the Ecological -- the problem of Ecological
18   Inference.
19       What the Method of Bounds does is say, Okay.
20   We can't know with -- or we don't know with precision
21   what the vote share is that Blacks are voting
22   Republican or Demonstrate.  But since Blacks are
23   70 percent of the population, and 70 percent of the
24   votes are for Democrats, there's a lower bound on how
25   heavy Black Republican voting can be and still produce

Page 47

1    that 70 percent overall vote share.  There's an upper
2    bound as well.  I think in the example I gave, it's
3    100 percent.
4        There is also Ecological Regression, which
5    is when you conduct a regression analysis of the
6    aerial units on the demographics of the aerial units
7    on vote share.
8        The problem with that is that you will
9    frequently produce estimates in excess of 100 percent,
10   which is, Yogi Berra aside, not possible.
11       So those were the kind of two going
12   approaches for a long time; and then, in the 1990s,
13   there was renewed interest in other methods.  One
14   method is Ecological Inference, which is a lengthy
15   algorithm which draws on -- an iterative algorithm
16   that draws on both ecological regression and
17   Ecological Inference -- or Method of Bounds, using the
18   Method of Bounds to kind of bend the line that
19   regression analysis produces to ensure it doesn't go
20   past the bounds of zero or 1.
21   Q.       Okay.  To your knowledge, has EI, which is
22   the acronym for Ecological Inference, has it been
23   accepted by the courts?
24   A.       To my knowledge, it has.
25   Q.       Okay.  And you're aware of the Homogenous

Page 48

1    Precinct method as well?
2    A.       Yes.
3    Q.       Can you describe what that means to you?
4    A.       Yeah.  HPA, which is -- or the Homogenous
5    Precinct Analysis is when you look at districts with a
6    minority population in excess of some threshold.
7    I mean, ideally, you would have 100 percent minority
8    precincts because, then, there is no problem of
9    Ecological Inference.  The voting rates of those
10   Homogenous Precincts are going to be equal to the
11   minority voting shares within those precincts.
12       You know, you can take the threshold down to
13   90 percent and your error is going to be constrained
14   by the Method of Bounds to be pretty small.
15   Q.       So Homogenous Precincts require the minority
16   CVAP, or whatever VAP, whatever metric you're using,
17   to be above a certain threshold to give meaningful
18   data, right?
19   A.       That's right.  The further you move away
20   from 100 percent, the kind of broader the potential
21   error margin is from the possible bounds.  You want to
22   be as close to 100 if you're doing that, as you can,
23   but that's not always possible.
24   Q.       Okay.  So, you know, in your study of the
25   Texas districts, do you have an expert opinion as to

Page 49

1    whether one method or another method is better for
2    understanding how people voted?
3        MR. KERCHER:  Object to the form.
4    A.       I wasn't asked to look at that.
5    Q.       Okay.  In your understanding -- or to your
6    knowledge, is -- Homogenous Precinct, has that method
7    been accepted by the courts?
8    A.       I don't know.
9    Q.       Are you familiar with the concept of peer
10   review?
11   A.       Yes.
12   Q.       What does it mean to you?
13   A.       So peer review is being -- having an article
14   submission or book reviewed in a double-blind
15   situation where you don't know the reviewers.  And, at
16   least in theory, the reviewers don't know who wrote
17   the article; and they give such analysis and opinions
18   on whether the book or article is suitable for
19   publication.
20   Q.       Uh-huh.  And do you have an opinion as to
21   whether peer review is an important factor in
22   assessing whether a method is sound or not?
23       MR. KERCHER:  Object to the form.
24   A.       I believe it's one with the Daubert factors
25   on a legal context.  Yes.

Sean P. Trende
September 02, 2022

Page 50

1  Q.      But in an expert context, outside of the
2  legal context?
3          MR. KERCHER:  Object to the form.
4  A.      It can be useful.  But a lot of junk gets
5  through peer review, and there is a lot of sound
6  analysis out there that isn't produced in
7  peer-reviewed journals.
8  Q.      Okay.  So you mentioned earlier that SMC is
9  a peer-reviewed method that you've used, right?
10  A.      I don't think I said it was peer-reviewed.
11  I said it was accepted by courts in multiple
12  circumstances.
13  Q.      Okay.  So you don't know whether it's
14  peer-reviewed or not?
15          MR. KERCHER:  Object to the form.  Misstates
16  his testimony.
17          You can answer.
18  A.      My understanding is it's under submission.
19  I don't know if it has completed peer review or not.
20  Q.      Okay.  Are you familiar with the Election
21  Law Journal?
22  A.      Yes.
23  Q.      Is it an accepted authority in your field?
24  A.      I mean, it produces peer-reviewed
25  literature.  That doesn't mean -- and people will rely

Page 51

1  on some of those articles.  That doesn't mean that
2  everything that's published in it is good.
3  Q.      Okay.  And you're familiar with, I guess,
4  the editors of the Election Law Journal?
5          MR. KERCHER:  Object to the form.
6  A.      The last I checked, which was a while ago,
7  Paul Gronke was the editor.  I don't know who is the
8  editor now, and I certainly haven't looked at the
9  masthead.
10  Q.      Are you familiar with Richard Hasen?
11  A.      Yes.
12  Q.      Is he an accepted authority in your field?
13  A.      Elections, in general, yes.  I don't know if
14  he's done much for gerrymandering.  But, yeah, he
15  does -- he tends to be more on what we call the vote
16  supression cases.
17  Q.      And are you familiar with Dan Lowenstein?
18  A.      That name is familiar.
19  Q.      Do you have an opinion as to whether he's an
20  accepted authority in the field of election?
21  A.      I'm not as familiar with his work.  I don't
22  think I've seen him much in the gerrymandering
23  literature.  If he's on their masthead, I'm sure he
24  has some expertise in some field of election law.
25  Q.      Okay.  So I want to ask you about your

Page 52

1  critiques of Dr. Duchin's demonstration plans.
2  In various places in your report, you critique
3  Dr. Duchin's demonstration plans, right?
4  A.      That's correct.
5  Q.      Okay.  Let's turn to Page 115 of your
6  report.  Okay.  Can you tell me what was the purpose
7  of your critique of Dr. Duchin's plans?
8          MR. KERCHER:  Object to the form.
9  A.      I was asked by counsel to review her
10  demonstration plans and I did that.
11  Q.      Okay.  And if you look at the second
12  sentence, correct me if I'm wrong on this, but it
13  says, "The purpose of this, to my understanding, is to
14  satisfy Gingles prong 1:"
15          And then you say, "Demonstrating that
16  minority group is sufficiently numerous and compact to
17  create a majority in a district."  Did I read that
18  right?
19  A.      Yes.
20  Q.      Okay.  So what is your understanding of what
21  the Gingles 1 prong requires?
22  A.      It would be better with the Gingles decision
23  in front of me.  And, first, to clarify this, in that
24  sentence you just read, since we're just talking about
25  my purpose, is not a reference to my purpose.  The

Page 53

1  purpose in that sentence is referring to what I
2  understand Drs. Duchin and Morales to be doing.
3          It would be better with the Gingles decision
4  in front of me.  But my understanding of Gingles
5  prong 1 is that, for a Voting Rights Act district to
6  be required, or however you want to phrase it, a
7  minority opportunity district, you, first, have to
8  demonstrate that the minority group is sufficiently
9  numerous and compact to create a majority in the
10  district.
11  Q.      Okay.  So compactness is a requirement.
12          What's your understanding of how compactness
13  is -- Sorry.  Strike that.
14          What's your understanding of how compactness
15  is measured for the purposes of Gingles 1?
16  A.      Well, that is an excellent question that --
17  and Gingles is G-I-N-G-L-E-S.  That is an excellent
18  question that we will probably get some insight from
19  the Court on when it renders its decision in the
20  Alabama case.
21          My understanding, from reading Gingles, is
22  that it is a reference to the minority group itself,
23  not to the shape of the district; although, it is
24  frequently referred to in terms of the district shape.
25  Q.      Okay.  And by reference to the minority

Sean P. Trende
September 02, 2022

Page 54

1  group itself, can you clarify that a little more?
2  What does that mean vis-a-vis compactness?
3  A.        Well, you can imagine a district that is
4  shaped like a square.
5  Q.        Uh-huh.
6  A.        And there is a minority group that is
7  12.5 percent of the population of the district in the
8  upper-left corner; 12.5 percent of the population of
9  the district in the upper-right corner; 12.5 percent
10 of the population of the district in the lower-right
11 corner; and 12.6 percent of the population of the
12 district in the lower-left corner.
13 Q.        Okay.
14 A.        In that situation, you would have a district
15 where the Convex Hull Score is 1, but I don't think
16 under any reasonable definition the minority group
17 itself would be considered compact.
18         You have four clusters at the four
19 extremities of the districts.  So that is how I think
20 of the difference between district compactness and
21 population compactness.
22 Q.        Okay.  So you're saying that, if the
23 district was square, its compactness score, and you're
24 using a -- whatever scale you mentioned, and I don't
25 remember what it was -- but that that district has

Page 55

1  a -- is compact in terms of its score, in terms of its
2  shape.  But because the minority population lives in
3  different corners, that the minority population,
4  itself, is not necessarily compact, right?
5  A.        That's the example.  Yes.  And the metric is
6  the Convex Hull Metric.  If you wanted to use the more
7  commonly used Reock, the compactness score for the
8  district would be, like, .65, which is still
9  relatively compact.
10 Q.        Do you have a sense of how geographically
11 dispersed the minority groups have to be to meet or
12 not meet compactness goals under Gingles 1?
13 A.        No.  I'm not sure how compact the districts
14 have to be to meet compactness goals under Gingles 1
15 because all of these metrics we have have the problem
16 that they don't really have good cutoffs.  And so as
17 Justice O'Connor famously wrote, "This is an area
18 where appearances do matter."  It inevitably becomes
19 more of a I-know-it-when-I-see-it-type test.
20 Q.        Uh-huh.  And is that -- Do you recall which
21 case she said that in?
22 A.        I don't, but it should be in Westlaw.
23 Q.        Okay.  Was it Voinovich that she said it in?
24 You don't remember?
25 A.        (Witness shakes head.)

Page 56

1  Q.        I know you said it would be helpful to have
2  Gingles in front of you.  But do you -- sitting here
3  today, without Gingles in front of you, do you have
4  any recollection as to whether the Gingles court
5  talked about compactness the way you did as part of
6  Gingles 1?
7  A.        Yes.
8  Q.        You do.  The Gingles court -- Did the
9  Gingles court say that the minority population has to
10 be close together?
11         MR. KERCHER:  Object to the form.
12         If you have a copy of the case, that would
13 probably be helpful.
14 A.        My recitation of Gingles prong 1, I believe,
15 is pretty close to a quotation from the opinion that
16 the minority group has to be sufficiently numerous and
17 compact.  And before that sentence in the opinion,
18 maybe two or three sentences earlier, there is a
19 reference to the compactness of the minority group.
20 Q.        Okay.
21 A.        So that's my recollection.  But at the end
22 of the day, this is a legal fight that I suspect you
23 all will have either here or in the Supreme Court in a
24 different case.
25 Q.        So I'd like you to go to paragraph two, or

Page 57

1  maybe it's three.  I don't know.  Anyway, it's the
2  last sentence.  It says, "A State's Enacted Plan,
3  however, is not necessarily a good comparator.  If a
4  state pursues a partisan gerrymander, and its partisan
5  goal outweighs its compactness goal, then its enacted
6  districts may not be very compact."
7         Do you see that sentence -- two sentences?
8  A.        I see the final two sentences of the
9  paragraph.  Yes.
10 Q.        Okay.  Thanks.
11         So you were talking about compactness in
12 terms of the Polsby-Popper scores, right?
13 A.        Yes.
14 Q.        So can you explain what you meant in
15 writing -- or when you wrote that, "The enacted plan
16 is not a good comparator for the compactness of
17 demonstration plans," why isn't it a good comparator?
18 A.        Because the Enacted Plan's districts can be
19 extremely non-compact without being a racial
20 gerrymander.  It could be a partisan gerrymander.
21         If I were looking for compactness under the
22 old Maryland plan, I certainly would not want to use
23 those districts as a definition of what a compact
24 district would be.
25 Q.        Okay.  So how does that relate to, if at

Sean P. Trende
September 02, 2022

Page 58

1  all, your Gingles 1 analysis?
2  A.        I think it should -- Gingles 1 is referring
3  to compactness of the minority group itself.  But I'm
4  also responding to the Duchin report here.  And so
5  Dr. Duchin's report, as I remember it, references the
6  Polsby-Popper scores and compares them to the Enacted
7  Plan.  And so, in response to Dr. Duchin, I am saying
8  that I don't think the Enacted Plan is necessarily a
9  good baseline for determining whether a district is
10 compact or not.
11 Q.        Got it.  Okay.  So turning, again, to that
12 last sentence, "If a state pursues a partisan
13 gerrymander, then its enacted districts may not be
14 very compact."  I omitted the middle part.
15         But is it your expert opinion that mapmakers
16 in Texas pursued partisan goals at the cost of
17 traditional redistricting principles, like
18 compactness?
19         MR. KERCHER:  Object to the form.
20 A.        No.  My opinion here is that the maps that
21 are drawn are consistent with partisan goals.  This
22 statement here is not Texas-specific.  It's an example
23 of why using a district's -- a state's map as a
24 baseline isn't necessarily particularly useful.  I
25 think a better example are the Maryland districts

Page 59

1  which were held to be a partisan gerrymander and were
2  extraordinarily convoluted.
3         I don't think producing a demonstration
4  district that was as convoluted as the Maryland
5  districts were would be producing a compact district.
6  And, in any event, that wouldn't be demonstrating
7  compact population.
8  Q.        Okay.  Can you turn to Page 116.  So 116
9  represents your creative and colorful term, "The
10 Carmen Miranda District."  Right?
11 A.        Hats off to my wife for that one.  But yes.
12 Q.        Well, I love that.  Now we call it "The
13 Carmen Miranda District," so she's had a lot of
14 impact.
15         So in figures -- Now, I want to look at
16 Pages 116, 117, 118, and 119, figures 82, 83, 84, and
17 85 of your report, that all are representations of
18 "The Carmine Miranda District" in Dallas.  So in
19 figure 83 -- in figures 83, 84, and 85, you look at
20 concentrations of Black, Latino, and Asian voters
21 separately in that proposed district, right?
22 A.        That's correct.
23 Q.        And on Page 119, if you go to Page 119, and
24 you read the sentence, and I'll read it for the
25 record.  It says, "In other words, even if we accept

Page 60

1  that the district itself is compact, and it isn't, the
2  majority groups that comprise the district are not."
3         What was your basis for saying that the
4  minority groups in that district are not compact?
5  A.        Because if you look at the concentrations of
6  the groups in the district by way of the dotplot, in
7  all of the instances, their concentrations are spread
8  out from the districts.  So, as I explained, to draw
9  an example from the preceding text on Page 8, the
10 Asian population has a cluster in Carmen Miranda's
11 hand and the back of her head.
12 Q.        Uh-huh.
13 A.        And in the top of the hat.
14 Q.        Okay.
15 A.        Those are distinct clusters of population.
16 Q.        Okay.  Did you look at whether the minority
17 communities were connected in any other way in this
18 district?
19 A.        No.  I was looking at their geographic
20 dispersement.
21 Q.        You didn't consider whether they are
22 connected through transportation means?
23 A.        No.
24 Q.        You didn't look at whether they share media
25 markets?

Page 61

1  A.        No.  I'm looking at their geographic
2  concentrations.
3  Q.        You didn't -- Okay.  Are you familiar with
4  the concept of communities of interest?
5  A.        Yes.
6  Q.        Okay.  In your own words, for the record,
7  what does that term mean to you?
8  A.        That is a very good question.  It is a term
9  that the Supreme Court threw out into the
10 redistricting world in the 1990s, and people have kind
11 of struggled since then to figure out exactly what it
12 means.  But it's different ways for communities --
13 different ways that communities may be formed on
14 different bases.
15         I'm sorry.  Justice O'Connor listed a bunch
16 of examples of how you might form a community of
17 interest.  I think it was the Miller case.
18 Q.        Uh-huh.
19 A.        But they are nonexclusive.  Different states
20 define them in different ways.  Some of them have them
21 written directly into their redistricting guidelines.
22 Yeah.  There's multiple ways that people have tried to
23 explain what a community of interest is.
24 Q.        And, to your knowledge, do you know how
25 Texas defines communities of interest?

Sean P. Trende
September 02, 2022

Page 62

1  A.        I do not.
2  Q.        Okay.  So to eval -- Did you conduct any
3  evaluation as to whether these minority groups form a
4  community of interest --
5            MR. KERCHER:  Object.
6  BY MS. CHAUDHURI:
7  Q.        -- in proposed District 32?
8            MR. KERCHER:  Object to the form.
9  A.        I did not.  I don't know that that's
10 relevant to a compactness analysis, but I didn't do
11 it.
12 Q.        Did you evaluate whether there are cultural
13 components that tie together the communities?
14           MR. KERCHER:  Object to the form.
15 A.        I did not.
16 Q.        Did you speak with anybody at, say, the
17 Texas NAACP or LULAC, or other civic engagement groups
18 about whether these minority communities form
19 communities of interest in proposed District 32?
20           MR. KERCHER:  Object to the form.
21 A.        I believe I would be terminated if I look to
22 LULAC or the NAACP.  But no, I -- for the other civic
23 engagement groups.  I did not.
24 Q.        Did you calculate the compactness of any of
25 the minority populations in proposed District 32?

Page 63

1  A.        So that is something that is lacking from
2  the literature which is focused on the shapes of
3  districts and was developed in a political
4  gerrymandering context.  I'm not sure what -- I'm not
5  sure what tests you would use for assessing the
6  compactness of the individuals.
7  Q.        Did you undertake this kind of analysis, you
8  know, to learn about what ties the minority groups
9  together, other than just their race, in any of the
10 other proposed congressional districts that you
11 critiqued?
12           MR. KERCHER:  Object to the form.
13 A.        No, because I'm conducting this analysis
14 specifically within the context of a proposed VRA
15 district that is seeking, to my understanding, to
16 demonstrate a minority group that is sufficiently
17 compact and numerous to constitute a majority number
18 in the district.  It's a very specific inquiry that
19 wouldn't have much to do with a Shaw claim, for
20 example, necessarily.
21 Q.        And is your opinion as to where the
22 minorities are located in the district, is it based on
23 you just eyeballing where the blue dots are?
24           MR. KERCHER:  Object to the form.
25 A.        As Justice O'Connor wrote, this is something

Page 64

1  where appearances do matter.  And so just as -- and in
2  some of these -- Actually, I get in some of these Shaw
3  cases, you do look at the location of the minority
4  groups.  Looking at the location of the minority
5  groups here.
6  Q.        Okay.  And so do you have an opinion as to
7  how geographically close the minority groups have to
8  be to meet the compactness requirement under
9  Gingles 1?
10 A.        If there's case law that develops that,
11 I'd certainly be interested in seeing it; but, to my
12 understanding, that type of ruling hasn't been made.
13 Maybe after the Alabama case, we'll get a better idea
14 of how that lies, if at all.  But for right now, no,
15 I don't know a specific threshold.  I just know that
16 it's fairly obvious for something like figure 85 that
17 those groups aren't compact.
18 Q.        Uh-huh.  Okay.  So there is a certain amount
19 of discretion that you had to use to conclude that
20 these groups were not compact, right?
21 A.        For all compactness inquiries, including an
22 inquiry into the compactness of the district, there's
23 discretion used because a Reock score is effectively
24 meaningless.  There have been attempts to give it some
25 meaning.  But at the end of the day, whether .14 is

Page 65

1  too little and .141 is just right is tough to come up
2  with a cutoff.  So it has the same amount of
3  discretion as any compactness requirement that's
4  undertaken.
5  Q.        But a Reock score describes the shape; how
6  compact the physical shape of a district is, right?
7  A.        Oh, that's right.
8  Q.        Okay.
9  A.        But you were asking me about interpretation;
10 and the interpretation of Reock scores requires
11 discretion usually.
12 Q.        Okay.  As you know, as we've established, as
13 does trying to figure out whether minorities living in
14 different corners of a district constitute a compact
15 group, right?
16 A.        I'm sorry.  Can you repeat that?
17 Q.        Sorry.  But that requires a level of
18 interpretation.
19           MR. KERCHER:  Object to the form.
20 A.        I think the example that I gave is --
21 I don't think you can make a less compact grouping
22 than having the group equally divided at corners of a
23 square.  And so if that is too much discretion being
24 used, then you've effectively eliminated the
25 compactness requirement for populations.

Sean P. Trende
September 02, 2022

Page 66

1  Q.      Let's turn to Page 203 and 204 of your
2  report.
3          And before we move on, just for the record,
4  you didn't look at any communities of interest or
5  evaluate those for the purpose of a compactness
6  analysis for the state senate demonstration district
7  that you critiqued, did you?
8  A.      That's right.  I didn't do a communities of
9  interest analysis for state senate districts.
10 Q.      And you didn't do that same analysis for the
11 house demonstration districts, right?
12 A.      That's correct.
13 Q.      On Page 203, my understanding is that you
14 critiqued Dr. Duchin's demonstration plans for house
15 districts in Denton-Wise, Brazoria, and Lubbock,
16 right?  Please take your time to review 203 and 204.
17 A.      That's correct.
18 Q.      Okay.  Your Denton-Wise plan, what is your
19 critique based on?
20 A.      It is based on the data presented in
21 Dr. Duchin's report and simulations in that area.
22 Q.      Okay.  In the second sentence, and I'll read
23 it.  "I note, however, that the district in
24 Denton-Wise only barely crosses the 50.21 percent
25 threshold using a collection of minority groups where

Page 67

1  no minority group constitutes more than 20.1 percent
2  of the CVAP."
3          Why was it -- why was the 50.21 percent
4  threshold significant to your analysis of compactness?
5  A.      This is a numerosity comment, not a
6  compactness comment.
7  Q.      Can you explain your numerosity comment?
8  A.      Yes.  So to qualify, if you will, for
9  Gingles prong 1, you have to reach 50.1 percent.  This
10 district barely crosses that threshold and it does so
11 by using the coalition of minority groups where
12 none of the groups constitutes more than 20.1 percent
13 of the CVAP.  I note that.  I don't know how the
14 lawyers are likely to use this.  I can conjure
15 scenarios.  But that is something I noted.
16 Q.      Okay.
17 A.      I don't draw strong conclusions from it.
18 Q.      Okay.  So you don't -- Okay.  So you're
19 not -- You're just noting.  You're not necessarily
20 critiquing the Denton-Wise district just because it
21 combines separate minority groups to meet the
22 50.21 percent threshold, right?
23          MR. KERCHER:  Object to the form.
24 A.      To meet the 50-percent-plus-1 threshold.
25 Q.      Right.  Is that a "Yes" or "No"?

Page 68

1  A.      Yes.  To meet the -- with qualification of
2  50-percent-plus-1 threshold from Gingles.
3  Q.      Okay.  I just wanted to understand what your
4  critique was of that.  Okay.
5          Let's move on to the second paragraph in
6  which you discuss her Lubbock demonstration plan.
7  What is your critique of the Lubbock demonstration
8  plan vis-a-vis Gingles 1?
9  A.      Well, as I understand, that's not Gingles 1.
10 As I understand the Gingles analysis, you have to
11 create a district that is likely -- that gives an
12 opportunity to elect the candidate of choice of the
13 minority group.
14          In a district where Joe Biden won only
15 33.5 percent of the two-party vote is one that is --
16 it would be a freakishly unlikely occurrence, given
17 what we see in other districts for that district to
18 elect the minority candidate of choice.
19          More importantly, I didn't note any analysis
20 from Dr. Duchin suggesting that a Biden 33.5 district
21 would elect the minority candidate of choice.
22 Q.      Okay.  So then your critique, again, just
23 for the record, is not vis-a-vis some compactness or
24 numerosity as to Dr. Duchin's Lubbock demonstration
25 plan, right?

Page 69

1  A.      That's correct.
2  Q.      Okay.  Is your critique based on an
3  effectiveness analysis as to the Lubbock district --
4  the proposed district?
5  A.      Yeah.  My critique is that I don't see any
6  evidence that this district will elect the minority
7  candidate of choice, and it would be a freakish
8  occurrence, in my experience, at any level of
9  government for a 33.5 percent Biden district to elect
10 the minority candidate of choice, assuming that's a
11 Democrat.
12          MS. CHAUDHURI:  I'd like to introduce
13 Exhibit 2.
14              - - -
15          And, thereupon, Plaintiff's Exhibit No. 2
16 was marked for purposes of identification.
17              - - -
18 BY MS. CHAUDHURI:
19 Q.      Do you recognize this document?
20 A.      Yes.  This is the supplement.  Yes.
21 Q.      What is it?
22 A.      It is the Supplemental Report on Districting
23 Alternatives, Local Polarization, and Effectiveness
24 from Dr. Duchin.
25 Q.      Did you ever review this document?

Page 70

1   A.      I did.
2   Q.      Okay.  For the alternative -- for the
3   proposed districts that you have critiqued, did you
4   critique any of the alternative proposals that were
5   provided by Dr. Duchin in this report?
6   A.      I don't know if she changed them
7   significantly from what was in her initial report or
8   not.  I'm not sure.
9   Q.      Okay.  So your -- So would it be fair to say
10  that the demonstration plans that you looked at were
11  from her initial report only in your report?
12          MR. KERCHER:  Object to the form.
13  A.      I don't know.
14  Q.      Okay.  And you wouldn't be able to tell me
15  which of her plans you were critiquing, whether it was
16  from her supplemental report or her initial report,
17  right?
18          MR. KERCHER:  Object to the form.
19  A.      Not as I sit here.  You would be able to
20  tell from the code.
21  Q.      Okay.  So let's turn back to Page 203 of
22  your report.  I'd like to focus in on the last
23  paragraph dealing with Dr. Duchin's Brazoria --
24  proposed demonstration plan for Brazoria house
25  districts.  What was your critique of the Brazoria

Page 71

1   districts?
2   A.      So it looks like there are a couple of
3   points.  The first is that the proposed district is
4   less compact than other districts in the area to the
5   extent that that's a reasonable consideration.
6           Second.  Joe Biden in the district won
7   53.5 percent of the vote, which there's no
8   demonstration that this district would consistently
9   elect Democratic candidates.
10          And, finally, there is not a demonstration
11  that the district population is -- that a minority
12  population of the district is compact.
13  Q.      Okay.  So the first sentence when you --
14  over the first point that you made, that the proposed
15  district is less compact than any other district in
16  the area, are you looking at Reock scores, or are you
17  looking at the minority compactness?
18  A.      I think neither.  I believe I was looking at
19  the Polsby-Popper score.  Or it could be Reock.
20  Q.      So you're looking at the shape of -- the
21  compactness of the shape of the district, right?
22  A.      That's right.  To the extent that the shape
23  of the district and the proposed approach to the shape
24  of the district from earlier are valid approaches.
25  This is not more compact -- This is less compact than

Page 72

1   other districts in the area.
2   Q.      Okay.  Earlier, for other districts in the
3   area, that's according to the state's plan, right?
4   A.      I think that's right.
5   Q.      Okay.  And so you necessarily would have had
6   to compare the Polsby-Popper of Duchin's proposed
7   district to the Polsby-Popper -- the state's other
8   districts in the area, to say -- to conclude that
9   Duchin's district is less compact than the other
10  districts, right?
11  A.      I think that's how I did it.
12  Q.      And, earlier, do you recall on Page 115, if
13  we can go back to page 115.  Okay.  If you, again,
14  look at the second, or maybe the -- second-to-last
15  sentence of the second paragraph, and you've said,
16  "A State's Enacted Plan, however, is not necessarily a
17  good comparator."  Do you see that?
18  A.      Yes.
19  Q.      Okay.  So if a State's Enacted Plan is not
20  necessarily a good comparator, then why did you even
21  conduct this analysis of looking at Brazoria's
22  proposed district vis-a-vis the state's districts?
23  A.      Because the court may disagree with me about
24  that statement.
25  Q.      Okay.

Page 73

1   A.      I don't think there's anything wrong with
2   conducting an analysis under the opposing expert's
3   standard, rather than taking for granted that the
4   court is going to accept your analysis of why that
5   standard is bad.
6   Q.      Okay.  So you did that analysis just for the
7   court to have that?
8   A.      Yes.  Belt and suspenders.
9   Q.      Okay.  But it doesn't -- it's not
10  necessarily -- so your Polsby-Popper compactness
11  analysis for Brazoria doesn't necessarily -- Strike
12  that.
13          So your Polsby-Popper analysis as to
14  Brazoria, that is not necessarily a relevant
15  consideration for Gingles 1, right?
16          MR. KERCHER:  Object to the form.
17  A.      I would urge the court to say that that sort
18  of analysis is not relevant to Gingles 1 and strike
19  Dr. -- or ignore Dr. Duchin's analysis along those
20  lines as well.
21  Q.      And as to the other demonstration districts
22  that you looked at, you know, the Carmen Miranda
23  district, the Lubbock districts, the Denton-Wise
24  proposed districts, you didn't conduct this kind of
25  analysis, right, in comparing those districts to the

Sean P. Trende
September 02, 2022

Page 74

1  State's enacted districts?
2          MR. KERCHER:  Object to the form.
3  A.      That's not right.
4  Q.      Okay.  What's not right about it?
5  A.      I did conduct that analysis.
6  Q.      You, for the other districts, looked at
7  whether Duchin's proposed district was less compact in
8  terms -- with respect to Polsby-Popper than the
9  state's districts?
10 A.      It's right there in the fourth full
11 paragraph on Page 115.
12 Q.      Okay.  But did you report it for all the
13 other proposed demonstration districts that you
14 critiqued?
15 A.      We can go through them, if you wish.
16 Q.      Yeah.
17 A.      You asked if I had done it for any of them,
18 and I clearly did it for the DFW districts in the
19 fourth full paragraph on Page 115, and I framed it the
20 same way, even under that standard, that Dr. Duchin
21 proposes.  So if the court --
22 Q.      Okay.
23 A.      Well, I'd like to finish.
24 Q.      Okay.
25 A.      Even if the court were to accept that

Page 75

1  standard, two of these districts would fail, but it
2  shouldn't accept the standard.
3  Q.      So if you go to Page 203 and you look at the
4  first two paragraphs, Denton-Wise and Lubbock -- and
5  we just talked about them.  It doesn't look like
6  you've reported a Polsby-Popper comparison for these
7  demonstration districts, right?
8  A.      That's correct.
9  Q.      Okay.  Why not?
10 A.      I don't know.  I was on Page 203 of the
11 report and was probably looking to finish.
12 Q.      I want to switch topics.  Let's go to
13 Page 7.
14         Would you like a break?  I'm happy to give
15 you a break if you want.
16         MR. KERCHER:  It's up to you.
17         THE WITNESS:  Sure.
18         MS. CHAUDHURI:  Five minutes?
19         THE WITNESS:  Yeah.  Sure.
20         (Recess taken.)
21         MS. CHAUDHURI:  Back on the record.
22 BY MS. CHAUDHURI:
23 Q.      Okay.  Mr. Trende, can you go to Page 7 of
24 your report.  I want to understand this split precinct
25 analysis that you did.  So can you just take a little

Page 76

1  bit of time and review the last paragraph, the last
2  part of 7, and then the next page.  And tell me when
3  you're done.
4  A.      Okay.
5  Q.      Okay.  So the first sentence reads, "Because
6  election data are made available at the precinct
7  level, most of the district-wide election data is
8  accurate."
9          What do you mean that most of the
10 district-wide election data is accurate?
11 A.      I think that's just a hedge.  I don't think
12 I have any reason to believe that the district-wide --
13 Oh.
14 Q.      Why is it "mostly"?
15 A.      No, no.  I'm sorry.  I'm understanding now
16 what I did.
17         So what that's saying is that, at the
18 precinct level, the votes are the votes.  And since
19 most of the precinct -- the overwhelming majority of
20 the precincts in the map are kept intact, those votes
21 will be spot on.
22         When precincts are split, though, you need
23 to estimate because the votes are still -- for
24 state-wide office are still tallied at the precinct
25 level, you have to figure out how you're going to

Page 77

1  apportion those votes to take account of the split.
2  Q.      Okay.  So "Most of the election -- of the
3  district-wide election data is accurate."  The
4  election data that may not be 100 percent accurate,
5  you were referring to split precincts, right?
6  A.      That's correct.
7  Q.      Anything else?
8  A.      There may be tabulation errors, or, you
9  know, the little things that appear in datasets.  But
10 I don't have any reason to believe that exists.
11 Q.      Okay.  And so going to your split precincts,
12 do you recall how many total split precincts you had
13 to deal with in your analyses of particular districts?
14 A.      No.
15 Q.      Can you estimate, you know, whether it would
16 have been under 100?  Over 100?
17 A.      No.
18 Q.      Okay.
19 A.      Not as I sit here.
20 Q.      Okay.  And what would allow you to be able
21 to estimate how many split precincts you had to deal
22 with in your analysis of how precincts were moved
23 based on Biden share or Trump share?
24         MR. KERCHER:  Object to the form.
25 A.      My code in my laptop could give a precise

Sean P. Trende
September 02, 2022

Page 78

1  answer, not an estimate --
2  Q.       Okay.
3  A.       -- of how many precincts were split.
4  Q.       Uh-huh.  Okay.  And then, if you look at the
5  bottom sentence, it starts with "Rather."  So it
6  reads, "Rather than simply dividing by the number of
7  blocks, analysts usually weight census blocks by some
8  number."
9          Can you explain that?  What did you mean
10 when you said "analysts weight census blocks by some
11 number"?
12 A.       So assume -- Let's just make it simple --
13 Q.       Okay.
14 A.       -- and say that the precinct has one block
15 with 100 people in it, and 50 blocks that are empty;
16 it's parkland, or a river, or something like that.  If
17 you split the district down the middle, you wouldn't
18 want to assign the vote share 50/50 because one of
19 those districts is made up entirely of blocks with no
20 population.
21 Q.       Uh-huh.
22 A.       So when assigning the votes, you would look
23 at the census block with 100 people in it, note that
24 it has 100 percent of the population of the district
25 in it, and assign all of the votes to that block, and

Page 79

1  therefore, to the precinct in which that block is
2  placed.
3  Q.       Okay.  So how did you weight or assign
4  percentages to the different split precincts?
5  A.       The standard way this is done in the field,
6  including by the people who maintained the
7  redistricting data hub from which I got most of this
8  data, you weight it by the Voting Age Population in
9  each block.  If a block has 20 percent of the Voting
10 Age Population in the precinct, it will be assigned
11 20 percent of the votes for each candidate, and so
12 forth.
13 Q.       Okay.  Is there any value to using CVAP
14 instead of Voting Age Population to do the weighting?
15 A.       You could do it with CVAP.
16 Q.       If you used CVAP, would that produce
17 different results?
18 A.       I don't know.
19 Q.       So you didn't undertake this weighting
20 process using the CVAP metric?
21 A.       I did not.
22 Q.       Okay.
23 A.       And as I understand it, the CVAP isn't
24 available at the block level so you would have to
25 project that down with an estimation technique as

Page 80

1  well.  So you would be, you know, putting an estimate
2  on top of an estimate, as opposed to VAP, which is a
3  census number.  You could, but it would be using an
4  estimate of where the populations are.
5  Q.       In Texas, there's a marked difference
6  between VAP and CVAP, would you agree, for at least
7  some populations?
8          MR. KERCHER:  Object to the form.
9  A.       For some populations.  Yes.
10 Q.       Okay.  So would it have been useful to, you
11 know, conduct this analysis based on CVAP, given that
12 some populations, there's, again, a huge discrepancy
13 between VAP and CVAP?
14         MR. KERCHER:  Object to the form.
15 A.       Again, my problem with that approach --
16 I don't know that it would be completely invalid.
17 But my problem with that approach is that the -- Well,
18 on top of that, the CVAP comes from the ACS data which
19 is an estimate.  And then, on top of that, you have to
20 estimate it down to the block level, and then you're
21 estimating vote share on top of that.
22         Perhaps, if Donald Trump had won his census
23 lawsuit, we would have the citizen population
24 specifically at the block level or the census
25 question.  But we don't have that data, and so I think

Page 81

1  you would be really risking yourself if you were to
2  pile inference upon inference upon inference in that
3  fashion.
4  Q.       Uh-huh.
5  A.       That is not to imply that Donald Trump
6  should have won the census lawsuit, which I don't
7  think he should have; but had he, we would have that
8  data.
9  Q.       Okay.  But this is a -- That's a different
10 way of figuring out the weight of the votes in the
11 precinct by using the metric of CVAP, right?
12         MR. KERCHER:  Object to the form.
13 A.       If you use CVAP, you are using a different
14 data set to weight for, so I guess you could frame
15 that as a different method.
16         MS. CHAUDHURI:  I would like to introduce
17 another document as an exhibit.  This is the -- Sorry.
18 I'm just looking for if I have another color copy of
19 this document to give you, Mr. Trende.
20         So let's mark this as Exhibit 3.
21         - - -
22         And, thereupon, Plaintiff's Exhibit No. 3
23 was marked for purposes of identification.
24         - - -
25 BY MS. CHAUDHURI:

Sean P. Trende
September 02, 2022

Page 82

1    Q.       Do you recognize this document?
2    A.       Yes.
3    Q.       What is it?
4    A.       It is the Response to Reports of Alfred and
5    Trende of Duchin.
6    Q.       And did you review this report at any point?
7    A.       The parts that responded to me.
8    Q.       Okay.  And do you intend to offer any
9    opinions on this report?
10           MR. KERCHER:  Object to the form.
11           You can answer.
12   A.       I don't have any intentions on what opinions
13   I'm going to offer.  Counsel will ask me questions, if
14   I'm called at trial, and I'll answer them.
15   Q.       Okay.  So you mentioned that you reviewed
16   the parts of the report that responded to you?
17           MS. CHAUDHURI:  Sorry, counsel.  Did I give
18   you a copy?
19           MR. KERCHER:  You didn't.
20           MS. CHAUDHURI:  I apologize.  I was very
21   focused on finding a color copy.
22           MR. KERCHER:  No worries.
23   BY MS. CHAUDHURI:
24   Q.       Do you have any opinions on Dr. Duchin's
25   rebuttal report?

Page 83

1            MR. KERCHER:  Object to the form.
2    A.       Not as I sit here off the top of my head.
3    Q.       I'd like you to turn to Page 14 of her
4    rebuttal report.  And did you conduct any analysis of
5    Dr. Duchin's analysis in the rebuttal report?
6            MR. KERCHER:  Object to the form.
7    A.       I read it and thought about it.  I didn't do
8    any additional work.
9    Q.       Okay.  So Page 14, Dr. Duchin has a table.
10   Do you have any opinions about this table?
11   A.       Yes.
12   Q.       Can you share them?
13   A.       I don't think it's useful.
14   Q.       Why not?
15   A.       For the reason we discussed at some length
16   earlier in the deposition.  I don't think it's enough
17   to have as many districts where Trump beats Biden.
18   You need to look at districts where the partisanship
19   of the map where Trump is beating Biden by a
20   substantial margin, in the third and fourth most
21   Republican districts where that occurs.  Because if
22   you're only looking at districts where Trump beats
23   Biden up to 50.0001 percent, Biden -- the process of
24   pushing down Biden's vote share from 49.99 percent to
25   45 percent in a universe where race and partisanship

Page 84

1    are correlated is likely going to have an effect on
2    the racial composition of those districts as well.
3    Q.       Uh-huh.  Okay.  So, hypothetically, if a
4    subset of ensemble plans were drawn where the
5    Trump share is higher than 50 percent, say, it's like
6    60 percent, that would necessarily decrease the number
7    of drops, right, from the ensemble?
8    A.       You're going to have to rephrase that.  I
9    don't understand the question.
10   Q.       Okay.  So if you're limiting the ensemble
11   subset --
12   A.       Are we talking about Dr. Duchin's ensemble?
13   Q.       I'm talking about Dr. Duchin's ensemble.
14   Yes.
15           So, hypothetically, if you're limiting the
16   subsets, and you're saying, Okay.  I want to control
17   for all the districts in this ensemble that have
18   greater than 60 percent Trump share, so they're
19   solidly Republican.  Do you understand that?
20   A.       Uh-huh.
21   Q.       So if you did that, and then you analyzed
22   that subset for other properties and wanted to compare
23   those other properties to the properties in the
24   state's plan, is that, in your opinion, a proper
25   comparison?

Page 85

1            MR. KERCHER:  Object to the form.
2            You can answer.
3    A.       You'd have to look at the specifics of the
4    ensemble, but it would -- if you had four 60 percent
5    Trump districts, at least 60 percent of the Trump
6    districts in all the ensemble maps, it would solve the
7    problem of only looking at 50.001 percent Trump
8    districts.
9    Q.       Uh-huh.  And if, hypothetically, in this,
10   again, smaller subset of solidly Republican districts
11   that you drew from Dr. Duchin's ensemble, you were to
12   hypothetically find that the State's Enacted Plan
13   compared to the subset vis-a-vis race was extreme,
14   what would that tell you?
15           MR. KERCHER:  Object to the form.
16   BY MS. CHAUDHURI:
17   Q.       If anything?
18           MR. KERCHER:  Same objection.
19   A.       As I said before, it would depend on the
20   particulars of the ensemble and how well it's
21   controlling for all the factors considered by the
22   legislature.
23           Again, there's a fact discovery side of this
24   case going on that I know nothing about, or very
25   little about, so it's hard to say.  It would be a

Sean P. Trende
September 02, 2022

Page 86

1  stronger argument for it than what we have right here
2  which is the, you know, number of four Trump-won
3  districts.
4  Q.        And strong argument for what?  You said
5  "it."  For what?
6  A.        Oh, that you had controlled for politics.
7  Q.        Okay.  If you were hypothetically to find
8  that in those solid Republican subset districts that
9  compared to the CVAP level in those districts, the
10  state CVAP level in its Enacted District was much
11  lower, then would that tell you that -- potentially,
12  possibly, allow you to infer that racial
13  considerations drove the process as opposed to
14  political considerations?
15          MR. KERCHER:  Object to the form.
16  A.        Again, it would depend on the particulars of
17  the ensemble and how well they control for other
18  factors being used by the legislature.  You know,
19  you've phrased it as "possible."  So I suppose it's
20  possible, but there's a whole bunch of other stuff you
21  would need to consider.
22  Q.        Okay.  I'm just trying to understand, you
23  know, what you can rule out and what you cannot rule
24  out as possible causes.  It sounds like, in this type
25  of analysis, it is possible that that's your

Page 87

1  testimony, right?
2          MR. KERCHER:  Object to the form.  Misstates
3  his testimony.  Compound and vague.
4  A.        Yeah.  My testimony is that, if you want --
5  In a world where -- especially in a world where race
6  and politics are correlated, you want to look at these
7  ensembles and determine that race is the factor, you
8  need to actually do a control -- a good control for
9  politics.
10          No control for politics, which is what we
11  saw in the initial Duchin report, is not good, and
12  controlling only for four districts where Donald Trump
13  got at least 50.0001 percent of the vote is not
14  useful, at least in a scenario where the legislature
15  had drawn things up to you at least 55 percent Trump
16  performance.
17  Q.        Uh-huh.  And if you had to control for
18  politics, how would you do it?
19          MR. KERCHER:  Object to the form.
20  A.        Well, as I've said, I don't know that you
21  can do that at all here because the districts that
22  were drawn fall outside the ensemble -- outside of all
23  of the plans on the ensemble for partisanship.  So
24  trying to match or come extremely close to what the
25  district -- what the legislature did, you're, at best,

Page 88

1  going to have a handful of maps to evaluate.  Because
2  they are, you know, so far afield of the ensemble in
3  terms of politics, it's very difficult to do.
4  Q.        Okay.  So now, your conclusion that it was
5  politics that drove the redistricting, it's not based
6  on discussions that you had with map drawers, is it?
7          MR. KERCHER:  Object to the form.  Misstates
8  his testimony and his conclusions.
9          You can answer, if you know.
10  A.        I didn't testify that it was politics.  My
11  report says it's consistent with the political draw.
12  There's a whole universe of fact testimony that's
13  being conducted in the case, which I haven't reviewed,
14  that may give further illustration on what the direct
15  intent is.
16  Q.        Okay.  So your report doesn't offer any
17  conclusions on what the intent was; it just shows that
18  politics may have been considered?
19          MR. KERCHER:  Object to the form.  Report
20  speaks for itself.
21          You can answer, if you know.
22  A.        The report says that it's consistent with
23  politics as a cause.  But, you know, the ultimate
24  conclusion of intent is a legal conclusion that I try
25  to avoid testifying to and is dependent on a broader

Page 89

1  inquiry.  This is just suggesting that it is
2  consistent with politics.
3  Q.        Okay.  And, you know, hypothetically, is
4  it -- if mapmakers -- if you knew that the mapmakers
5  were aware of where certain racial groups lived in the
6  districts, would you say it would be easy for them to
7  draw maps that had a desired partisan effect?
8          MR. KERCHER:  Object to the form.  Vague.
9  Calls for speculation.
10  A.        No.
11  Q.        Why not?
12  A.        Well, for one thing, the white population in
13  these districts is politically diverse.  There are
14  areas of Dallas where you get a lot of white liberals.
15  And so just knowing the racial makeup, you may draw in
16  too many people from Deep Ellum that that would skew
17  the partisanship of the district away from what you
18  would expect it to be if you were just doing a crude
19  racial analysis.
20  Q.        Okay.  Do you have opinion as to whether a
21  partisan gerrymander can also be a racial gerrymander?
22          MR. KERCHER:  Object to the form.
23  A.        I haven't looked at that here.
24  Q.        But you have looked at whether there is
25  evidence that could support whether the state's plan

Sean P. Trende
September 02, 2022

Page 90
1  is a partisan gerrymander, right?
2          MR. KERCHER:  Object to the form.
3  A.      Yeah.  I looked at -- I looked at whether
4  it's consistent with a political motivation drawing.
5  That's right.
6  Q.      But your analysis doesn't necessarily rule
7  out that the maps -- that it's possible that the maps
8  are a racial gerrymander, right?
9          MR. KERCHER:  Object to the form.
10 A.      I don't know what's possible or
11 impossible --
12 Q.      Okay.
13 A.      -- given the fact side of things.  All the
14 report says is that it's consistent with -- At least
15 with respect to Shaw claims, it's consistent with
16 political -- an attempt to shore up Republican
17 prospects in the state.
18 Q.      Does your report contain the full scope of
19 the opinions that you intend to offer in this case?
20         MR. KERCHER:  Object to the form.
21 A.      I don't have any intent to offer opinions.
22 I'll ask questions that counsel asks of me.  I'll
23 answer the questions that counsel asks of me.
24         MS. CHAUDHURI:  Maybe we can take a
25 two-minute break.  I'm almost at the end of my

Page 91
1  questioning.
2          (Recess taken.)
3          MS. CHAUDHURI:  Back on the record.
4  BY MS. CHAUDHURI:
5  Q.      So I am at the very end of my questioning.
6  I just have a few points for you.
7          I just want to clarify:  Did you conduct
8  your own effectiveness analysis for any of -- for any
9  of Dr. Duchin's districts?
10         MR. KERCHER:  Object to the form.
11 A.      Besides the analysis of the Lubbock
12 district, no.
13 Q.      Okay.  And sitting here today, you're not
14 prepared to offer any opinions other than those in
15 your report, right?
16         MR. KERCHER:  Object to the form.
17 A.      I could probably offer a lot of opinions,
18 but the opinions that I've thought of and investigated
19 are in my report.
20         MS. CHAUDHURI:  Okay.  Thank you.
21         That concludes questioning for the Texas
22 NAACP.
23         MS. ANDERSON:  Could we take a lunch break
24 now?
25         THE WITNESS:  I guess if we're going to take

Page 92
1  an hour or 45 minutes, or whatever, it doesn't matter
2  to me.
3          MR. ROSENBERG:  We should decide how long we
4  want to do this.
5          MR. SWEETEN:  It's 10:56 --
6          THE WITNESS:  11:00.  We're on normal time.
7          MR. SWEETEN:  Let's come back at 12:45.
8  Would that work for everybody?
9          MS. ANDERSON:  Yes.
10                     - - -
11         And, thereupon, a lunch recess was taken.
12                     - - -
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Page 93
1                      FRIDAY AFTERNOON SESSION
                        Friday, September 2, 2022
2                        12:45 p.m.
                          - - -
3                      EXAMINATION
4  BY MS. ANDERSON:
5  Q.      Good afternoon, Mr. Trende.  My name is
6  Jacki Anderson; I'm on behalf of the United States.
7          Mr. Trende, is there any reason you can
8  think of today why you would not be able to answer
9  questions fully and accurately?
10 A.      No.
11 Q.      And are you on any type of medication or
12 drugs of any kind that might make it difficult for you
13 to understand and answer questions?
14 A.      No.
15 Q.      And then last thing of the preliminary
16 questions, I just want to remind you that you're under
17 oath and subject to federal penalties for giving false
18 or misleading testimony; so it's important to answer
19 my questions truthfully and accurately.  Do you
20 understand?
21 A.      Yes.
22 Q.      Mr. Trende, do you mention Dr. John Logan in
23 your report?
24 A.      Who?
25 Q.      Dr. John Logan.

Sean P. Trende
September 02, 2022

Page 94

1  A.        I don't believe so.
2  Q.        And nothing in your report critiques
3  Dr. Logan's report, correct?
4  A.        At least not directly.
5  Q.        And you don't plan to offer an opinion on
6  Dr. Rogan -- or Dr. Logan's report going forward,
7  correct?
8  A.        Again, not directly.  I don't know.
9  I've never even read the Logan report or seen it.  But
10 some -- If my opinions are relevant to it, counsel may
11 use it that way.
12 Q.        And nothing in your report critiques
13 Dr. Enos's report, correct?
14 A.        Not directly.
15 Q.        You don't plan to offer an opinion on
16 Dr. Enos's report going forward, do you?
17 A.        Again, not directly.
18 Q.        Do you plan to do that indirectly?
19 A.        Well, like I'd said, some of the things that
20 I say may come to bear on Dr. Enos's report.  I don't
21 know how counsel might use it.  But if there's overlap
22 between his report and other reports, I guess it would
23 be in response to it, but I wouldn't be commenting on
24 it directly.
25 Q.        Mr. Trende, could you please turn to Page 9

Page 95

1  of Exhibit 1.  Mr. Trende, in the second-to-the-last
2  sentence, in the second paragraph of Page 9, do you
3  state that, "As the decade progressed, the suburbs
4  swung towards Democrats"?
5  A.      Yes.
6  Q.        Mr. Trende, are you aware that Texas's
7  minority population grew in the last ten years?
8  A.      Yes.
9  Q.        Are you aware that Texas's minority
10 population in the suburbs grew in the last ten years?
11 A.      Yes.
12 Q.        Was the movement of the minority population
13 into the suburbs one factor as to why the suburbs
14 swung towards Democrats in Texas?
15 A.        To the extent the minority groups are voting
16 Democratic, increased minority population in the
17 suburbs would produce movement towards Democrats; but
18 I haven't done any specific analysis of Texas.
19 Q.        In your report, Mr. Trende, do you describe
20 a growing trend towards Democratic support in the
21 DFW region?
22 A.      Yes.
23 Q.        And are you aware that the DFW area grew in
24 the last ten years?
25 A.      Yes.

Page 96

1  Q.        Are you aware that the minority population
2  grew in DFW in the last ten years?
3  A.        That's my understanding.
4  Q.        And were you aware that the minority
5  population grew in the DFW suburbs?
6  A.        That's my understanding.
7  Q.        And, Mr. Trende, do you believe that
8  minority growth in the DFW suburbs was one reason for
9  why the suburbs swung towards the Democrat?
10 A.        Again, to the extent that the minority
11 groups are voting Democratic, their growth in the
12 suburbs would push the suburbs towards the Democrats,
13 assuming that those suburbs didn't have white voters
14 who were even more Democratic than those groups to
15 begin with.
16 Q.        Mr. Trende, do you describe in your report a
17 growing trend towards Democratic support in CD 23,
18 which is the San Antonio/El Paso area?
19 A.        I know -- Yeah.  I don't know if I discussed
20 that.
21 Q.        Mr. Trende, are you aware that the
22 population of San Antonio and El Paso grew in the last
23 ten years?
24 A.        I know that with respect to San Antonio, and
25 don't know one way or the other with El Paso; though,

Page 97

1  I'd be surprised if it didn't.
2  Q.        Mr. Trende, are you aware that in
3  San Antonio, the minority population grew in the last
4  ten years?
5  A.      It's my understanding.
6  Q.        Mr. Trende, are you aware that the minority
7  population grew in San Antonio in the last ten years
8  in the suburbs?
9         MR. KERCHER:  Object to the form.  Assumes
10 facts not in evidence.
11 A.        That's my understanding.
12 Q.        And do you believe that the minority growth
13 in the suburbs of San Antonio was one reason for why
14 the suburbs swung towards the Democrats?
15        MR. KERCHER:  Object to the form.
16 A.        Again, to the extent that those minority
17 groups are voting more heavily Democratic than
18 previous residents of the areas they moved to, that
19 would turn those area towards the Democrats or push
20 those areas towards the Democrats.
21 Q.        Mr. Trende, have you ever written on how the
22 growth of the Latino population would impact the
23 Republican vote in Texas?
24 A.      Yes.
25 Q.        Did you do that in your book, "The Last

Sean P. Trende
September 02, 2022

Page 98

1  Majority - Why The Future of Government Is Up For
2  Grabs And Who Will Take It"?
3  A.       I don't remember.
4  Q.       Do you remember what you wrote about the
5  growth of the Latino population and how that would
6  impact the Republican vote in Texas?
7  A.       I don't remember.
8                - - -
9          And, thereupon, Plaintiff's Exhibit No. 4
10 was marked for purposes of identification.
11               - - -
12 BY MS. ANDERSON:
13 Q.       Mr. Trende, the court reporter has handed
14 you what has been marked as Exhibit 3.  Mr. Trende,
15 what did I just hand to you?
16 A.       I believe this is Exhibit 4.
17 Q.       Oh, sorry.  Exhibit 4.
18 A.       And this is the title page or the cover of
19 my book.  I've forgotten 7th and 8th grade English.
20 I have no idea what these two pages are called, but
21 they're from the intro, and then one page out of the
22 book.
23 Q.       And what page is that?
24 A.       Page No. 145.
25 Q.       And who drafted this book?

Page 99

1  A.       I did.
2  Q.       And then, Mr. Trende, do you have any reason
3  to believe that Exhibit 4 is not a true and correct or
4  true and accurate copy of Page 145 of the book, "The
5  Lost Majority - Why The Future of Government Is Up For
6  Grabs And Who Will Take It"?
7  A.       I don't.
8  Q.       And then, Mr. Trende, could I please turn
9  your attention to the first paragraph on Page 145.
10 And do you see the sentence, I believe it's the third
11 sentence on Page 145 that says, "This is not to
12 dismiss the challenge that the growing Latino
13 population presents for the GOP, but rather to put it
14 in perspective - the critical mass necessary to create
15 the problem is probably still some years off.  And if
16 the Latino vote falls off trend, as it did in 2010,
17 those numbers will take longer to arrive."
18         Is that a correct reading of that, what's on
19 the page?
20 A.       Yes.
21 Q.       And were you referring to Texas with that
22 statement?
23         MR. KERCHER:  Object to the form.
24         You don't have a copy of the whole book so
25 he can get the context of the page, or did you just

Page 100

1  bring the one page?
2          MS. ANDERSON:  Just the one page.
3  BY MS. ANDERSON:
4  Q.       If you go up to the top, it says, "In Texas,
5  the Latino share of the electorate would have to
6  almost triple before Rick Perry would have been
7  threatened with a loss.  This not to dismiss the
8  challenge that the growing Latino population presents
9  for the GOP, but rather to put it in perspective - the
10 critical mass necessary to create the problem is
11 probably still some years off.  And if Latino vote
12 falls off trend, as it did in 2010, those numbers will
13 take longer to arrive."
14         Mr. Trende, does that part of Page 145 deal
15 with Texas?
16         MR. KERCHER:  Object to the form.
17         My question still stands.  I appreciate you
18 reading more from the page you provided, but did you
19 bring the book?
20         MS. ANDERSON:  I did not bring the book.
21 BY MS. ANDERSON:
22 Q.       So if you could just answer as to what he
23 sees.
24 A.       I don't know the broader context.  What's on
25 Page 144 may -- you know, when I go home and pull out

Page 101

1  my copy, may alter my view.  But those sentences that
2  you're referring to are talking about Texas.
3  Q.       And do you recall what year the book was
4  written?
5  A.       I wrote it with my middle son in the Baby
6  Bjorn, so that would be early 2011.
7  Q.       And have your opinions changed that you just
8  read on Page 145 since then?
9  A.       They've modified somewhat.
10 Q.       How so?
11 A.       Well, first, I don't think the Hispanic
12 population is as heavily Democratic as people expected
13 it would be back in 2011.  And even Ruy Teixeira, who
14 is one of the authors of "The Emerging Democratic
15 Majority," to which this book is a response, has -- or
16 a modification more than a response, even Ruy Teixeira
17 has backed off of that view.
18         And, second, if you go -- And this is the
19 importance of having the broader context.  If you go
20 down to the second half of the page, there's a
21 discussion of what is really the main thesis of the
22 book which is that politics doesn't go in straight
23 lines.  People respond to contingency.  And so trying
24 to do a straight-line projection of how growth in one
25 demographic group or another can affect things in the

Sean P. Trende
September 02, 2022

Page 102

1  medium- to long-term is problematic.
2  Q.      So I'm going to switch gears, and we'll come
3  back again to that general topic.
4         Mr. Trende, did you ever consider
5  explanations other than partisanship for why the
6  congressional districts were drawn the way that they
7  were in the Enacted Map?
8         MR. KERCHER:  Object to the form.
9  A.      No.  I was only asked to look at whether
10 the -- to respond to certain expert reports and to
11 look at whether the maps were consistent with
12 partisanship.
13 Q.      And then going back to the trend of race and
14 partisanship, Mr. Trende, I believe earlier you said
15 that partisanship or race are generally correlated in
16 Texas; is that correct?
17        MR. KERCHER:  Object to the form.  Misstates
18 his testimony.
19 A.      I said that minority voting and partisanship
20 are correlated.
21 Q.      How are they correlated?
22 A.      It depends on the particular minority group.
23 But, for example, African Americans are generally, to
24 my understanding at least, heavily, heavily Democratic
25 in Texas.  I think there's some dispute about -- and a

Page 103

1  fair degree of uncertainty about the status of
2  Hispanic residents of Texas.  And the Asian
3  population, a little more touch and go, depending on
4  the election.
5         So, overall, you know, at least according to
6  the stuff I've read, I don't know the specific numbers
7  and haven't looked into it, specifically, but my sense
8  is that minority groups tend to be more Democratic
9  depending on the group.
10 Q.      Mr. Trende, did you look at any racially
11 polarized voting analyses in drafting your report?
12 A.      I'm sure I read it in the expert reports.
13 Q.      So did you read that expert report of
14 Dr. Alfred in drafting your report?
15 A.      No.
16 Q.      Mr. Trende, are African American voters in
17 the DFW area likely to vote for Democratic candidates
18 generally?
19        MR. KERCHER:  Object to the form.
20 A.      I haven't done that analysis specifically.
21 Q.      And are Hispanic voters in the DFW area
22 likely to vote for Democrats generally?
23        MR. KERCHER:  Object to the form.
24 A.      I haven't done that analysis.  And I'm not
25 as sure, generally, because some of the changes we've

Page 104

1  seen in voting patterns in recent years.
2  Q.      Mr. Trende, are race and politics at least
3  somewhat correlated in the El Paso area?
4         MR. KERCHER:  Object to the form.
5  A.      There is some degree of correlation between
6  race and politics, to my understanding, as it's been
7  presented by some of the experts in this case.  But
8  I haven't done an independent analysis specific to
9  El Paso.
10 Q.      Would you say that Hispanic voters in the
11 El Paso area generally are likely to vote for
12 Democratic candidates?
13        MR. KERCHER:  Object to the form.
14 A.      Like I said, I haven't done an analysis
15 specific to the El Paso area.
16 Q.      And, Mr. Trende, are race and politics at
17 least somewhat correlated in the San Antonio area?
18        MR. KERCHER:  Same objection.
19 A.      In my understanding from the representations
20 made by Plaintiffs' experts is that there is, and
21 that's what causes a problem with the simulation
22 approach.  But I haven't done an independent analysis
23 specific to San Antonio.
24 Q.      Are Hispanic voters in the San Antonio area
25 likely to vote for Democrats generally, would you say?

Page 105

1         MR. KERCHER:  Object to the form.
2  A.      Again, I haven't done an analysis specific
3  to San Antonio.  And I think, given some of the
4  changes we've seen in recent elections, I'm less
5  certain of that than I would have been in the past.
6  Q.      Mr. Trende, are there specific areas of
7  Texas where race and politics are not at least
8  somewhat correlated?
9         MR. KERCHER:  Object to the form.  He's
10 testified he has not undertaken that analysis.
11 A.      Yeah.  I haven't undertaken the analysis.
12 I know that there's some stuff in my report from the
13 article that Dr. Ansolabehere -- A-N-S-O -- I'm not
14 going to try.  We can do that at the break.  -- that
15 has some areas that don't have -- don't seem to have
16 strong polarization; others that may.  So I don't know
17 off the top of my head.
18 Q.      So could you please turn to Page 99 of your
19 report.  Mr. Trende, on Page 99, on the second -- in
20 the second sentence, do you start that sentence with,
21 "Although the Enacted Map deviates in some ways from
22 the ensemble, which we should expect in a place where
23 race correlates with politics and map drawers care
24 about politics."
25         I'm just going to stop the quote there.  Is

Sean P. Trende
September 02, 2022

Page 106

1  that an accurate statement of yours on Page 99?
2         MR. KERCHER:  Object to the fact that you
3  didn't read the whole sentence.
4  A.       It's not the whole sentence, but those are
5  the first two phrases of that sentence, or clauses.
6  I don't know which is which.
7  Q.       Is the rest of the sentence, "The Enacted
8  Map contains the same number of districts where
9  minority groups are a majority of the citizen voting
10 each population as we find in the ensemble"?
11        MR. KERCHER:  Object to the form.
12 A.       Yes.  That is the second or third
13 clause/phrase of the sentence.
14 Q.       So I have a question.  What do you mean by
15 the phrase, "map drawers care about politics"?
16 A.       Well, it has to be -- that phrase has to be
17 read in the context of the entire sentence, and,
18 really, the report.  But the Enacted Map deviates from
19 the -- which is referring -- First off, we're
20 referring to the charts, figures 71 and 72 found on
21 Pages 100 and 101.
22        And if you are in a place where race
23 correlates with politics, and if the map drawers are
24 motivated by politics in their drawing, you wouldn't
25 necessarily expect an ensemble -- an Enacted Map to

Page 107

1  match up with the racial demographics of the ensemble,
2  even if the map drawers are in different politics.
3  Because if there is a correlation, as you move around
4  the political makeup of the districts, you will also
5  change the racial makeups of the district, even if
6  you're completely ignorant or indifferent to race.
7  Q.       Mr. Trende, which map drawers were you
8  referring to with that statement?
9         MR. KERCHER:  Object to the form.
10 A.       Well, it doesn't say "the map drawers."  It
11 just says, "In a place where race correlates with
12 politics and map drawers care about politics."
13 Q.       So that's an assumption that you're making?
14        MR. KERCHER:  Object to the form.
15 A.       No.
16 Q.       So map drawers care about politics, why is
17 that not an assumption that you're making?
18        MR. KERCHER:  Object to the form.
19 A.       Because it's conditional.  We would expect
20 this in a place where race correlates with politics
21 and map drawers care about politics.
22 Q.       So you're not saying the Texas legislature
23 necessarily cared about politics with that statement?
24        MR. KERCHER:  Object to the form.  The
25 report speaks for itself and taking three words out of

Page 108

1  it is not going to make the meaning of the report
2  change.
3  BY MS. ANDERSON:
4  Q.       You can answer.
5  A.       I don't recall the exact phrasing of the
6  question to answer yes or no.  But the report is about
7  whether the maps are consistent with politics.  I know
8  that there's an entire universe of fact discovery
9  being done that I am not aware of that may go more
10 directly to the question of intent.  This is just
11 saying that the map is consistent with the particular
12 outcome.  It is not a statement of their intent.
13 Q.       And, Mr. Trende, do you know who drew the
14 congressional map?
15 A.       No.
16 Q.       So you never spoke to the map drawers?
17        MR. KERCHER:  Object to the form.
18 A.       No, that's not the inquiry I'm conducting.
19 I'm not trying to figure out exactly what their intent
20 is.  I'm trying to figure out whether the outcome is
21 consistent with a political intent.
22 Q.       Mr. Trende, did you say earlier that race
23 and politics often correlate and it can sometimes be
24 difficult to sort race and politics out?
25        MR. KERCHER:  Object to the form.

Page 109

1  A.       I don't remember my exact testimony, but
2  something -- at least something to that effect; that
3  when race and politics correlate, it's difficult to
4  sort out which is which.
5  Q.       How do political scientists generally go
6  about sorting race and politics?
7         MR. KERCHER:  Object to the form.
8  A.       I don't know that you can make a specific
9  statement on that.  Most of the political science
10 literature isn't really concerned with that; it's
11 something that comes up in litigation.  But I think
12 more for this inquiry, I'm just looking at whether
13 it's consistent with politics and not trying to sort
14 them out.
15 Q.       Mr. Trende, have you ever, in any other
16 context, tried to sort out race and politics for any
17 other expert report or academic scholarship or any
18 other reason?
19        MR. KERCHER:  Object to the form.
20        You can answer.
21 A.       Yes.
22 Q.       How did you go about trying to sort out race
23 and politics in the other circumstance?
24 A.       So, for example, in the Maryland case, one
25 of the objections possibly was that Maryland is

Sean P. Trende
September 02, 2022

Page 110

1  subject to the Voting Rights Act, as are all states
2  now, I guess, since it's just Section 2.  And that it
3  would have to draw some Section 2 districts and that
4  this might account for the skew that we saw in the
5  political drawing of the maps.
6          So the way we addressed it there was simply
7  by freezing districts that the legislature had drawn,
8  conceding them the two minority majority districts and
9  then the one other district that was completely
10  enclosed by those two districts, and examining the
11  remaining districts.
12          Likewise, in the New York litigation, faced
13  with a similar objection, we froze the minority
14  majority districts, or at least the arguable -- I
15  guess they weren't even minority majority there.  The
16  arguable ability to elect districts and just examined
17  the remainder and saw that they had a significant
18  political skew.
19  Q.      And, Mr. Trende, with your work in this
20  case, did you do the same?  Did you freeze the
21  arguable ability to elect congressional districts in
22  this case to try to disentangle race and politics?
23          MR. KERCHER:  Object to the form.
24  A.      No, I didn't think it would be particularly
25  helpful to do an analysis here that excluded the

Page 111

1  districts that we are most interested in.
2  Q.      Mr. Trende, would you say that you were
3  successful in sorting out race and politics for your
4  work in this case?
5          MR. KERCHER:  Object to the form.
6  A.      In this case?
7  Q.      In this case.
8  A.      I'm not answering the question of how much
9  race or politics.  I'm answering the question of
10  whether the maps are drawn in a way that's consistent
11  with a political draw.
12  Q.      So, Mr. Trende, you didn't try to sort out
13  race and politics for each line of each precinct or
14  each of Texas's 38 congressional districts?
15          MR. KERCHER:  Objection.  Asked and answered
16  several times.  Several times.  We're not going to do
17  this where you ask the same question 17 times.  We're
18  already set up to be here for eight hours.  If we
19  continue asking the same question, I'm going to ask
20  you to move on.
21          Mr. Trende, you may answer this question.
22  A.      I did not do a line-by-line analysis of
23  every precinct in the state of Texas to determine
24  whether it is race or politics.
25  Q.      Thank you.

Page 112

1          Could you please turn to Page 133.  Could
2  you please turn to the last sentence on Page 133.
3  Could you please read that out loud.
4  A.      "Regardless, showing that the districts with
5  the weakest Republican showing were also the most
6  heavily white, and that by increasing the Republican
7  share one also tended to increase the white share does
8  not give rise to an immediate inference that race was
9  the predominant factor."
10  Q.      So, Mr. Trende, is it your understanding
11  with that sentence that, by increasing their
12  Republican share in the congressional district, the
13  white population share increases, too?
14          MR. KERCHER:  Object to the form.
15  A.      I don't think that's what I'm saying.
16  Q.      What are you saying?
17  A.      Showing that the districts with the weakest
18  Republican showing were almost -- were almost the most
19  heavily white, and that by increasing the Republican
20  share, one also tended to increase the white share
21  does not give rise to immediate inference that race
22  was the predominant factor.
23  Q.      Would it give rise to an inference that race
24  was one factor; not the predominant factor?
25          MR. KERCHER:  Object to the form.

Page 113

1  A.      I haven't considered that, but I don't know
2  why it would necessarily do that.
3  Q.      Mr. Trende, could it ever be true that
4  increasing the white share of a district would give
5  rise to an inference that race was considered in
6  drawing the districting lines?
7          MR. KERCHER:  Object to the form.
8  A.      I don't know.  I haven't been able --
9  I haven't been asked to consider every possible
10  scenario and what would be possible and what wouldn't.
11  Q.      So you don't know?
12          MR. KERCHER:  Object to the form.
13  A.      I don't know.  I haven't been asked to
14  consider every possible scenario and decide what would
15  be possible and what wouldn't.
16  Q.      Could you please turn to Page 132 of your
17  report which is Exhibit 1.  Could you please read the
18  first sentence, the last paragraph on Page 132,
19  please.
20  A.      "Kousser ignores the fact that there are
21  multiple instances where district lines were drawn
22  that have a partisan effect but not a racial effect."
23  Q.      And what district lines were you referring
24  to with that statement?
25  A.      The two examples given here.  I may have had

Sean P. Trende
September 02, 2022

Page 114

1  more in mind, but the two examples are Travis County,
2  the 37th Congressional District, which contains the
3  most heavily Democratic precincts in the county, not
4  necessarily the most white ones; and the 6th District
5  in Texas which carves out purple and red areas of
6  Dallas County, so those were the two districts I, at
7  least, wrote about.
8  Q.      Were you thinking of any other districts
9  with that sentence?
10        MR. KERCHER:  Object to the form.
11  A.      Well, in general, a good example -- another
12  good example of how there are instances where map
13  drawers created a partisan effect, but not necessarily
14  a racial effect, is the boundary between District 24
15  and districts -- I guess Districts 32 and 33 north of
16  downtown Dallas, so that would have been in my mind.
17  And there may have been others, but that's all I can
18  think of right now, just trying to give two examples.
19  Q.      Were there some congressional district lines
20  that you observed that had a racial effect?
21        MR. KERCHER:  Object to the form.
22  A.      Not that I can recall.  I wasn't asked to
23  examine the racial effects of the maps; I was asked to
24  examine the partisan effects of the maps.
25                  - - -

Page 115

1        And, thereupon, Plaintiff's Exhibit No. 5
2  was marked for purposes of identification.
3                  - - -
4  BY MS. CHAUDHURI:
5  Q.      Mr. Trende, I've handed you what has been
6  marked as Exhibit 5.  Mr. Trende, what did I just hand
7  to you?
8  A.      This is a tweet.
9  Q.      Who drafted the tweet?
10  A.      I wrote the tweet.
11  Q.      When is the tweet dated?
12  A.      August 7, 2019.
13  Q.      And, Mr. Trende, do you have any reason to
14  believe that this is not a true and accurate copy of
15  your tweet?
16  A.      No.
17  Q.      And, Mr. Trende, is your Twitter public?
18  A.      As long as I haven't blocked you, yes.
19  Q.      Mr. Trende, could you please read aloud your
20  tweet.
21  A.      I'm replying to Benjy Sarlin.  And I don't
22  know what Benjy said.  But, "Yeah, that was my
23  thought.  Hispanics in Texas were breaking 70/30 D
24  tops.  So as long as whites were 70/25 Republican, or
25  whatever, it was going to take a long time for the

Page 116

1  state to go D.  But with whites at 65/35 or lower?..."
2  Q.      Mr. Trende, with your tweet, did you mean
3  that 70 percent of Hispanics were voting for
4  Democratic candidates in Texas?
5        MR. KERCHER:  Object to the form.
6  A.      I wouldn't have believed that at the time
7  because we had instances of Hispanics, apparently, who
8  were voting even more heavily Republican even back
9  then.  I think the exit polls had Cornyn carrying them
10  in 2014.
11        You know, one of the things with Twitter is
12  you have a 240-character limit, so you can't really go
13  into a lot of detail, which is why I have that
14  parenthetical "or whatever."  So whatever the specific
15  numbers were.  So my thoughts may have been, and
16  probably were, more complex than you can do in 240
17  characters.
18  Q.      And, Mr. Trende, did you mean that
19  70 percent of white voters were voting for Republican
20  candidates in your tweet?
21        MR. KERCHER:  Object to the form.
22  A.      No, it wasn't supposed to be that specific
23  which is why I have the "or whatever" parenthetical.
24  I don't know the context even of what Benjy was
25  saying.  He might have provided those numbers, for all

Page 117

1  I know.
2        The point was that, as whites leave the
3  Republican Party in Texas as part of the general
4  suburban swing against Republicans, that is going to
5  accelerate the Democratic swing of Texas because --
6  I love the state, but Texas is one giant suburb, at
7  least the populated areas.
8                  - - -
9        And, thereupon, Plaintiff's Exhibit No. 6
10  was marked for purposes of identification.
11                  - - -
12  BY MS. ANDERSON:
13  Q.      Mr. Trende, what did I just hand you?
14  A.      This is "Barack Obama and The New America,
15  The 2012 Election and the Changing Face of Politics"
16  by Larry Sabato.
17  Q.      Were you one of the authors of this book?
18  A.      Yes.
19  Q.      Do you have any reason to believe what
20  I handed you as Exhibit 6 is not a true and accurate
21  excerpt of the copy of your book, "Barack Obama and
22  The New America, The 2012 Election and The Changing
23  Face of Politics"?
24  A.      I do not have any reason not to believe
25  that.

Page 118
1  Q.      Could you please turn to Page 157 of your
2  book.  Could you please turn to the second-to-last
3  sentence on page -- of the first full paragraph of
4  Page 157.  The paragraph that beings with, "You can
5  also."  Could you turn to the second-to-the-last
6  sentence in that paragraph and could you please read
7  that out loud for me.
8  A.      So we're skipping over the part where I talk
9  about Republican outreach to Hispanic voters and going
10 straight to, "2004, George W. Bush won nearly half of
11 the Texas Latinos, 49 percent to 50.  Just four years
12 later, Obama would win 63 percent."
13 Q.      Could you please read the beginning of that
14 sentence, starting with "Nevertheless"?
15 A.      That's the previous sentence.
16 Q.      Oh, sorry.  Could you read the sentence
17 previously?
18 A.      "Nevertheless, Latinos in the state have
19 only grown more Democratic as time has gone on,"
20 which was probably true as of 2012 when I wrote this.
21      MR. KERCHER:  Counsel, are these page
22 numbers correct?
23      MS. ANDERSON:  Yes, they are --
24      MR. KERCHER:  Because --
25      MS. ANDERSON:  -- to my knowledge.

Page 119
1      MR. KERCHER:  Because Pages 1, 2, 3, 4, Page
2  5 of Exhibit 6 reflects that Mr. Trende's article
3  begins at Page 157 of this book.  Are you asking
4  Mr. Trende about somebody else's essay?
5      MS. ANDERSON:  I'm asking him about
6  Page 157.
7  BY MS. ANDERSON:
8  Q.      Mr. Trende, were you involved at all in
9  editing this book?
10 A.      No.
11 Q.      You never reviewed the other chapters in
12 this book, Mr. Trende?
13 A.      No.
14 Q.      Okay.  You never -- Okay.
15 A.      No.  I'm -- No.  I doubt if I read any of
16 them.
17              - - -
18      And, thereupon, Plaintiff's Exhibit No. 7
19 was marked for purposes of identification.
20              - - -
21 BY MS. ANDERSON:
22 Q.      Mr. Trende, you have been handed what's been
23 marked as Exhibit 7, correct?
24 A.      Yes.
25 Q.      What is this?

Page 120
1  A.      This is an article for Real Clear Politics
2  titled, "The Case of The Missing White Voters," dated
3  November 8th, 2012.
4  Q.      And who drafted it?
5  A.      I did.
6  Q.      And where was it published?
7  A.      Real Clear Politics.
8  Q.      Do you have any reason to believe this is
9  not an accurate and true copy of the article entitled
10 "The Case of The Missing White Voters"?
11 A.      I don't have a reason to believe one way or
12 the other.
13 Q.      Could you please turn to the fifth paragraph
14 of this article.  Does the fifth paragraph of this
15 article state, "Obviously, the surge in the nonwhite
16 vote is troubling to Republicans who are increasingly
17 almost as reliant upon the white vote to win as
18 Democrats are on the nonwhite vote"; is that correct?
19 A.      I see that as a correct reading.  Yes.
20 Q.      Does the next sentence say, "With the white
21 vote decreasing as a share of the electorate over
22 time, it becomes harder and harder for Republicans to
23 prevail"; is that a correct reading of that?
24 A.      That is a correct reading.
25 Q.      Do you still believe that it's true that

Page 121
1  with the white voting share decreasing as a share of
2  the electorate over time, it becomes harder for
3  Republicans to prevail generally?
4  A.      I'm not as confident as I was in 2012.
5  Q.      I'm not asking you about your confidence
6  level; I'm asking you about if that's still -- if you
7  still believe that to be true; that with the white
8  vote decreasing as a share of the electorate over
9  time, it becomes harder for Republicans to prevail?
10      MR. KERCHER:  Object to the form.  Asked and
11 answered.
12 A.      Not everything has to be a binary.  I'm less
13 confident -- substantially less confident than I was
14 in the past.  We have, for example, since 2012, the
15 minority population continuing to grow, and
16 Republicans took back the Senate in 2014.  They won
17 the Presidency with an abhorrent candidate in 2016.
18 And, in 2020, that candidate had some of the best
19 performances among nonwhite voters in recent history.
20 So there's a lot of things since then that suggest
21 that Republicans weren't as justified in being
22 troubled as it appeared in 2012.
23 Q.      Mr. Trende, is one possible way of making a
24 district more Republican to remove African-American
25 voters from a district?

Sean P. Trende
September 02, 2022

Page 122

1    MR. KERCHER: Object to the form.
2  A.    It depends who you put back in to compensate
3  for them. If you are in New York City, I'm guessing
4  there are places where you can probably remove African
5  Americans and replace them with whites who are even
6  more heavily Democratic.
7  Q.    Is one possible way of making a district
8  more Republican to remove African-American voters from
9  a district and put in Anglo-Republican voters?
10    MR. KERCHER: Object to the form.
11  A.    It would depend how Republican or Democratic
12  those voters you replace the African-American voters
13  with are.
14  Q.    What if they were over 70 percent Republican
15  leaning?
16    MR. KERCHER: Object to the form.
17  A.    If you take out a group that is, say,
18  70 percent Democratic and replace them with voters who
19  are 70 percent Republican, the district will be made
20  more Republican.
21  Q.    And, Mr. Trende, is one possible way of
22  making a district more Republican to remove Latino
23  voters from a district who vote for Democrats?
24    MR. KERCHER: Object to the form.
25  A.    It depends on the voting patterns of the

Page 123

1  white voters or -- Well, actually, you didn't specify
2  who you replaced them with. If you replace them with
3  African-American voters, you make it more Democratic.
4  Q.    Is one possible way of making a district
5  more Republican to remove Latino voters who, for
6  example, have a 70 percent leaning Democratic, and you
7  replace them with white Republicans who vote at
8  70 percent Republican?
9    MR. KERCHER: Object to the form.
10  A.    That would make the district more
11  Republican. Yes.
12  Q.    Mr. Trende, is race ever used as a proxy for
13  partisanship in map drawing?
14    MR. KERCHER: Object to the form.
15  A.    I don't know. Not in my experience.
16  Q.    So, Mr. Trende, are you aware of
17  circumstances in which partisan information is not
18  available at the sub-precinct level and race is
19  available at the sub-precinct level? Wouldn't race be
20  a potential proxy for partisanship in that situation?
21    MR. KERCHER: Object to the form.
22  A.    It would depend on how the minority groups
23  vote and how the white groups vote.
24  Q.    Would race at the precinct level be a proxy
25  for partisanship if the majority of minorities voted

Page 124

1  for Democratic candidates?
2    MR. KERCHER: Object to the form.
3  A.    Again, not necessarily. To give you an
4  example from here in Columbus: German Village is an
5  area, kind of a hip, trendy -- not T-R-E-N-D-E -- area
6  south of the downtown that votes 80 percent
7  Democratic. So swapping out Hispanic voters in
8  Columbus for residents of German Village would
9  probably make the district more Democratic, not more
10  Republican. It really just depends on the
11  particulars.
12  Q.    Could you please turn to Page 9 of your
13  report.
14  A.    Page what?
15  Q.    9. Could you please read the last sentence
16  of the first paragraph.
17  A.    The last of what?
18  Q.    The first paragraph.
19  A.    "Nevertheless, a close examination of the
20  historical context behind the districts, of the
21  districts themselves, and of their political and
22  racial composition clearly demonstrates that they are
23  consistent with districts drawn substantially to
24  improve the political advantage of the Republican
25  Party."

Page 125

1  Q.    So, Mr. Trende, did your examination of the
2  political and racial compositions of the Congressional
3  districts help lead you to the conclusion that the
4  districts were drawn to improve the political
5  advantage of the Republican Party?
6    MR. KERCHER: Objection to the form.
7  Misstates his testimony. The report speaks for
8  itself.
9  A.    Among other things.
10  Q.    Would you agree that it's important to look
11  at the racial composition of Congressional districts
12  in examining what factors played a role in the Enacted
13  Congressional Map?
14    MR. KERCHER: Object to the form. Misstates
15  his testimony.
16  A.    If you're trying to demonstrate that maps
17  are drawn consistent with an attempt to improve the
18  political advantage of the Republican Party, no, I
19  don't think you have to do that.
20  Q.    Did you look at racial composition of the
21  districts in your report?
22  A.    I don't remember if I looked at racial
23  composition. It's a 210-page report. There are
24  certainly precincts that I looked at the racial
25  compositions. But, again, most of this was looking at

Sean P. Trende
September 02, 2022

Page 126

1 how the politics of the districts change, which you
2 can determine just by looking at vote shares.
3 Q.        Mr. Trende, did you not do a close
4 examination of the racial compositions which is in the
5 sentence -- the last sentence of the first paragraph
6 on Page 9?
7          MR. KERCHER:  Object to the form.
8 A.        Close examination modifies things as a
9 whole.  So close examination of the historical context
10 behind the districts, the districts themselves,
11 political/racial compositions as well.
12          And so, yes, looking carefully at some of
13 the areas that I single out can help shed light on
14 things, but I don't know that, if you're trying to
15 inquire whether things are consistent with the
16 political story, you necessarily have to look at every
17 potential racial angle of the district.
18 Q.        So you didn't look at the racial composition
19 of each Congressional district in your report?
20          MR. KERCHER:  Object to the form.  Asked and
21 answered.
22 A.        I didn't look at every individual district's
23 overall racial composition.  As a matter of fact,
24 I don't even know if I looked at every single
25 district.  I didn't look at 11, for example.  But

Page 127

1 where the examination of the precinct-level things
2 that I was looking at revealed something interesting,
3 I pointed it out.  But if you're trying to demonstrate
4 that something is consistent with the political draw,
5 the political numbers are what's really the most
6 relevant and interesting.
7 Q.        So, Mr. Trende, how much of your report
8 examined the political composition of the
9 Congressional districts versus the racial composition?
10          MR. KERCHER:  Object to the form.
11 A.        I haven't done such an analysis and don't
12 even know where I would begin trying to do that.
13 Q.        Mr. Trende, would it be fair to say that the
14 majority of your report focuses on the political
15 composition of the congressional districts instead of
16 the racial composition?
17          MR. KERCHER:  Same objection.
18          You can answer, if you know.
19 A.        The goal is to -- or the inquiry I was
20 tasked with was whether it was consistent with a
21 political draw; so yes, the emphasis was on the
22 political aspects of the districts.
23 Q.        Mr. Trende, would it be important to look at
24 the history of the treatment of racial groups in
25 examining whether race played a role in the 2021

Page 128

1 Enacted Congressional Map, that that was what you were
2 looking for?
3          MR. KERCHER:  Object to the form.
4 A.        I think that's one of the factors in -- or
5 the legal conclusions.  If you were trying to prove
6 that, you would probably want an expert who does that
7 kind of analysis.  So I guess if you're a plaintiff,
8 you would want someone to do that.
9 Q.        Mr. Trende, could you please turn to Page 40
10 of your report.  Mr. Trende, in the second-to-the-last
11 sentence of the first paragraph, do you say, "The
12 dotplots, however, demonstrate that they do not
13 perfectly sort white residents of the area."
14 A.        That's the second-to-last sentence.  Yes.
15 Q.        Were you referring to figure 25 with that
16 sentence or 24?
17 A.        I believe so, yes.
18 Q.        Which one?
19 A.        I'm sorry.  I thought you were changing your
20 answer -- your question from 23 to 24.
21 Q.        Were you looking at 24?
22 A.        Yes, 24.
23 Q.        And, Mr. Trende, in figure 24, did you use
24 the white total population?
25 A.        I'm sorry.  Explain what you mean by that.

Page 129

1 Q.        What does each dot represent in figure 24?
2 A.        It would be -- a dot is 10 people,
3 I believe.  I would have to look at the code, just as
4 any other dotplots.
5 Q.        So 10 white total population, or 10 voting
6 population?  Or something else?
7 A.        CVAP I think is what I used for the
8 dotplots.
9 Q.        And, Mr. Trende, is it your understanding
10 that map drawers would have had to draw the
11 Congressional map to perfectly align with the white
12 population in order for the conclusion to be made that
13 race played a role in redistricting?
14          MR. KERCHER:  Object to the form.
15 A.        That's not my understanding of the legal
16 standard, but that's something for you all to fight
17 about, I guess.
18 Q.        And, Mr. Trende, did you do a similar
19 dotplot like you did for figure 24 for the
20 African-American population in the DFW area?
21 A.        No.
22 Q.        Mr. Trende, did you do a similar dotplot
23 like in figure 24 for the Latino population in the
24 DFW area?
25 A.        No.

Sean P. Trende
September 02, 2022

Page 130

1  Q.      And, Mr. Trende, I believe that you
2  mentioned earlier that the white population in the
3  DFW area votes for Democrats and Republicans.  So why
4  would you expect there to be perfect -- that this map
5  perfectly sort the white residents of that area, given
6  that white residents vote less cohesively?
7          MR. KERCHER:  Object to the form.
8  A.      I wouldn't expect that.  That's my point.
9  Q.      And you don't know whether -- So you didn't
10 do a dotplot of the Latino population of the DFW area
11 so you don't know whether the Latino population would
12 be perfectly sorted with the Enacted Map; is that
13 correct?
14         MR. KERCHER:  Object to form.
15 A.      I think that's in Dr. Duchin's report, but
16 I'm not sure, to which I'm responding.
17 Q.      Mr. Trende, is it true that the white
18 population in Texas votes less cohesively than the
19 African-American population in Texas?
20         MR. KERCHER:  Object to the form.
21 A.      I haven't done that analysis.
22 Q.      And, Mr. Trende, is it true that the white
23 population in Texas votes less cohesively than the
24 Latino population in Texas?
25         MR. KERCHER:  Object to the form.

Page 131

1  A.      I haven't done the analysis.
2  Q.      Could you please turn to Page 34.  Actually,
3  sorry.  Please turn to Page 208.
4          Could I please turn your attention to the
5  second -- well, to the paragraph that starts with the
6  second paragraph from the bottom.  Could you please
7  start reading that paragraph beginning with the
8  sentence "Again."
9  A.      "Again, this is likely not the case in Texas
10 where rural heavily white precincts vote quite
11 differently from heavy white precincts in less rural
12 areas.  Indeed, a portion of this paper is -- suggests
13 (sic) that this assumption is not warranted.  For
14 example, urban, white, and Hispanic voters are
15 substantially more Democratic than rural white
16 Hispanic voters."
17 Q.      Mr. Trende, how do urban white voters
18 generally vote in Texas?
19         MR. KERCHER:  Object to the form.
20 A.      It would depend on the area, but more
21 Democratic than rural white voters.
22 Q.      What about inner suburban white voters?
23         MR. KERCHER:  Object to the form.
24 A.      Depends on the suburb.
25 Q.      And, Mr. Trende, do urban and suburban white

Page 132

1  voters in Texas generally vote differently from how
2  rural white voters vote?
3          MR. KERCHER:  Object to the form.
4  A.      That's what the paper suggests.
5  Q.      Do you have any reason to believe that
6  that's not true?
7          MR. KERCHER:  Same objection.
8  A.      No.  If you're going to paint in broad
9  strokes, rural whites in Texas tend to be more
10 Republican than urban and suburban whites.
11 Q.      And, Mr. Trende, do you know where within
12 the DFW area white voters generally vote for
13 Democratic candidates?
14 A.      I couldn't tell you every single place.
15 From my experience in Dallas, a lot of the areas
16 immediately north of downtown and to the east of it
17 have a lot of young liberal voters.  As you get
18 further out, you tend to get more increasingly
19 Republican, but even that's probably changing as
20 places like Garland and Sachse and other places move
21 towards Democrats.  S-A-C-H-S-E.
22 Q.      Mr. Trende, how much time did you spend
23 working on the section of your report that deals with
24 the DFW Congressional districts?
25 A.      I have no idea.

Page 133

1  Q.      Would you say weeks?  Would you say days?
2  Would you say months?
3  A.      I would say no idea.
4  Q.      How long did you take to prepare your report
5  overall?
6  A.      I don't know.
7  Q.      When were you first asked to work on your
8  report in this case?
9  A.      Sometime in May or June of this year.
10 Q.      Did you begin working immediately then, or
11 did you wait a while after you were first engaged to
12 work on this report -- to work on your report?
13 A.      I don't think I was formally engaged until
14 June.  I think I was first approached May or early
15 June.  I think I started pretty quickly and then had
16 some other things to attend to, but I don't know for
17 sure.
18 Q.      Would you like to take a break, Mr. Trende?
19 A.      No, I'm good.
20 Q.      Okay.  Will you please turn to Page 43 of
21 your report.  Could you please turn to the last
22 sentence on Page 43, which I think was discussed
23 earlier starting with, "But here, the data and history
24 are more consistent with the political story."  Is
25 that an accurate quote from Page 43?

Page 134

1  A.     Yes.
2  Q.     And you were referring to the DFW
3  Congressional districts with this quote, correct?
4  A.     Yes.
5  Q.     And, Mr. Trende, were you making a
6  conclusion as to the DFW configuration as a whole or
7  any specific Congressional district with this state?
8        MR. KERCHER:  Object to the form.
9  A.     This was with reference to the seven
10  districts that Dr. Duchin had identified because this
11  is in response to Dr. Duchin.
12  Q.     And what history are you referring to?
13  A.     The histories of the districts that are at
14  the beginning of each discussion of the districts.  So
15  the motivation for those sections, there is a line
16  that's tucked into the captions of one of Dr. Duchin's
17  reports, or one of Dr. Duchin's tables, that says
18  something to the effect that the Sixth District
19  sprawls needlessly through counties south of Dallas.
20  And so I think it's important context to know that,
21  with the exception of the awful 1990s map, the
22  districts have -- the Sixth District has generally
23  gone through the rural areas south of Dallas.
24  Q.     Mr. Trende, are you aware that the history
25  of the DFW Congressional configuration includes a

Page 135

1  court finding of intentional racial discrimination in
2  the past decade?
3        MR. KERCHER:  Object to the form.
4  A.     No.
5        MS. ANDERSON:  Why don't we just take a
6  10-minute break.
7        THE WITNESS:  All right.
8        (Recess taken.)
9  BY MS. ANDERSON:
10  Q.     Mr. Trende, how many pages of your report
11  are dedicated to Congressional District 23?
12        MR. KERCHER:  Object to the form.
13  A.     I don't know.
14  Q.     Would it be fair to say that you used two
15  pages to discuss CD 23 specifically?
16        MR. KERCHER:  Same objection.
17  A.     I doubt it.
18  Q.     Why do you doubt it?
19  A.     Because I don't think that's right.
20  Q.     How much time did you spend drafting the
21  pages of your report that relate to Congressional
22  District 23?
23        MR. KERCHER:  Object to the form.
24  A.     I have no clue.
25  Q.     Mr. Trende, would you please turn to Page 98

Page 136

1  of your report.  Mr. Trende, what do the dots on the
2  dotplot that is figure 69 on Page 98 represent?
3  A.     The white population of Congressional
4  districts in Austin/San Antonio area.
5  Q.     Is that the Voting Age Population or the
6  white population?
7  A.     It would be the CVAP, non-Hispanic white
8  population.
9  Q.     Does each dot represent 10 people or
10  100 people?
11  A.     It's whatever I intended to use.
12  Q.     I think you used both.
13  A.     No, I think I was consistent.  So probably
14  10.  You would be able to tell from the code
15  I provided.
16  Q.     Mr. Trende, did you create a dotplot similar
17  to figure 69 for the African-American population?
18  A.     No.  I think there is something that has the
19  African-American and Hispanic population in
20  Dr. Duchin's reports, but I could be wrong.
21        Actually, no.  I don't think she does that
22  for Austin/San Antonio.
23  Q.     And then I take it, Mr. Trende, you did not
24  do a dotplot similar to figure 69 for the Hispanic
25  population?

Page 137

1  A.     I did not.
2  Q.     And then, Mr. Trende, are you aware of a
3  2011 -- or that the 2011 version of Congressional
4  District 23 was found to have been drawn with
5  discriminatory intent by the court?
6        MR. KERCHER:  Object to the form.
7  A.     No, I've never read the Perez v Abbott
8  decision.
9  Q.     Are you aware of it?
10        MR. KERCHER:  Same objection.
11  A.     Yes, I just used its name.  I'm aware of it,
12  but I've never read it, and I don't know the specific
13  findings of it.
14  Q.     But you knew which court decision involved
15  CD 23, correct?
16        MR. KERCHER:  Object to the form.
17  A.     I didn't say it involved CD 23.  But that's
18  the main case coming out of the 2011 map draw that
19  I'm aware of, so I assume that's the decision you're
20  referencing.
21  Q.     Are you aware that in the previous decade
22  before 2011 a court found that a version of
23  Congressional District 23 violated the Voting Rights
24  Act?
25        MR. KERCHER:  Object to the form.

Page 138

1  A.      So this is, perhaps, going to sound a little
2  pedantic, but this is how I had it in mind when I
3  wrote this.  25 was the district that was struck down
4  because 25 was no longer a legitimate Voting Rights
5  Act district.  It couldn't offset the loss of 23.  At
6  least that's how I understand LULAC.
7           So my understanding of LULAC is that 25 was
8  the district that was struck down, and everyone agreed
9  that 23 was no longer an opportunity district.
10 Q.      And, Mr. Trende, do you discuss the racial
11 composition of CD 23 in your report?
12 A.      I think so.
13 Q.      Where?
14 A.      So if you look at the tables -- that would
15 be maps on page -- Am I out of order now?  So on
16 Page 199, the simulations based on the precincts in
17 all of the districts, including 23, give insight into
18 the consistency of the plan and its effect.
19          I also thought there was a discussion of the
20 District 20/23 boundary.  But, again, it's a 210-page
21 report so I'm not sure exactly where.  There might not
22 have been.
23 Q.      Mr. Trende, are you aware of whether
24 Hispanic voters in Congressional District 23 tend to
25 vote for Democratic candidates?

Page 139

1  A.      I don't know the specifics of it, especially
2  now.
3  Q.      Did you ever know the specifics of whether
4  Hispanic voters in CD 23 tended to vote Democratic?
5  A.      So that example in 2012, I would have said
6  certainly.
7                     - - -
8           And, thereupon, Plaintiff's Exhibit No. 8
9  was marked for purposes of identification.
10                    - - -
11 BY MS. ANDERSON:
12 Q.      Mr. Trende, the court reporter has handed
13 you what has been marked as Exhibit No. 8.  What is
14 this?
15 A.      This is a tweet.
16 Q.      Who drafted the tweet?
17 A.      I wrote the tweet.  Drafting makes it sound
18 like there is a lot of thought and editing that goes
19 into it.
20 Q.      Sure.
21 A.      There isn't.
22 Q.      What is the date of the tweet?
23 A.      December 4th, 2013.
24 Q.      And, Mr. Trende, do you have any reason to
25 believe that this is not a true and accurate copy of

Page 140

1  your tweet?
2  A.      No.
3  Q.      Mr. Trende, does your tweet say, "Looking at
4  2013 election, dropoff in Hispanic vote potential
5  problem for Ds in Arizona 1, 2, 9; California 3, 24,
6  26, 36; Florida 26; Texas 23"?
7  A.      There's abbreviations for a lot of that.
8  But yeah.
9  Q.      And so, Mr. Trende, would it be fair to say
10 that the preferred candidate of the Hispanics in
11 Congressional District 23 was a Democrat?
12         MR. KERCHER:  Object to the form.
13 A.      Like I said, in 2012, I would have said
14 that.  I guess I still would have said it in 2013.
15 Q.      Would you still say it now?
16 A.      I think I already told you that I don't
17 know.
18                    - - -
19          And, thereupon, Plaintiff's Exhibit No. 9
20 was marked for purposes of identification.
21                    - - -
22 BY MS. ANDERSON:
23 Q.      Mr. Trende, what did I just hand to you?
24 A.      My law school note.
25 Q.      And what is the Law Review article titled?

Page 141

1  A.      "Why Modest Proposals Offer The Best
2  Solutions For Combating Racial Profiling."
3  Q.      Where was the Law Review article published?
4  A.      The Duke Law Journal.
5  Q.      And you drafted this article?
6  A.      Yes.
7  Q.      Do you have any reason to believe that this
8  is not a true and accurate copy of your Law Review
9  article?
10 A.      It appears to be a true and accurate copy of
11 my note.
12 Q.      Of your note?
13 A.      Yes.
14 Q.      Could you please turn to Page 379.
15          Mr. Trende, could you please go to the
16 number 3, "The solution does too little."  Could you
17 please read the first three sentences out loud of that
18 section.
19 A.      "To be sure, the suggestion offered isn't
20 perfect.  It would affect only those cases where a
21 police officer admits to pulling over African
22 Americans due to their race or where the statistics
23 are so compelling that there can simply be no other
24 rational explanation for the stop.  And it may be that
25 the largest effect of the suggested approach would be

Page 142

1  to drive racism underground.  Officers may well
2  concoct convincing post hoc rationalizations for their
3  missteps."
4  Q.       So, Mr. Trende, do you believe that
5  decision-makers always admit when they make a decision
6  involving race?
7          MR. KERCHER:  Object to the form.
8  A.       I don't think they would necessarily always
9  do that.  No.
10  Q.       Mr. Trende, do you believe that
11  decision-makers sometimes concoct post hoc
12  rationalizations for decisions involving race?
13          MR. KERCHER:  Object to the form.
14  A.       I'm sure there are instances where they do
15  it.  As I suggest, they may well do it.
16  Q.       And, Mr. Trende, do you believe
17  decision-makers sometimes make decisions involving
18  race, even when the statistics are not so compelling
19  in showing racial intent?
20          MR. KERCHER:  Same objection.
21  A.       Can you ask me that again?
22  Q.       Sure.  Do you believe that decision-makers
23  sometimes make decisions involving race even when
24  statistics are not so compelling in showing racial
25  intent?

Page 143

1          MR. KERCHER:  Object to the form.
2  A.       Do I believe -- Can we break that down
3  because the negative in there is throwing me off given
4  what's written here.  Or phrase it without a negative.
5  Q.       Sure.  Sometimes do decision-makers make
6  decisions that involve race where the statistics
7  aren't strong enough to show that racial intent
8  exists, but there still was race considered in the
9  decision-making process?
10          MR. KERCHER:  Object to the form.
11  A.       I don't know whether that's the case or not.
12  Q.       Could you please explain what you meant by,
13  "To be sure, the suggestion offered isn't perfect.  It
14  would affect only those cases where a police officer
15  admits to pulling over African Americans due to their
16  race or where the statistics are so compelling that
17  there can simply be no other rational explanation"?
18          With that statement, are you saying that
19  sometimes racial profiling occurs even where the
20  statistics are not so compelling, that there's no
21  other rational explanation other than race for the
22  stop?
23          MR. KERCHER:  Object to the form.  Asked and
24  answered.  Vague.
25  A.       I wrote this in the waning days of the

Page 144

1  Clinton Presidency, so I could not tell you what
2  I meant when I wrote it back then.  And this is the
3  conclusion -- This is in the conclusion, so I would
4  probably have to reread the entire article to get the
5  entire context.
6          What I think it says is that you only have
7  cases where police thought this was the solution,
8  which I think was reversed incorporating equal
9  protection norms into the Fourth Amendment definition
10  of reasonableness; that this solution only affects
11  cases with an admission that race played a factor or
12  where there's just overwhelmingly compelling
13  statistics.
14          I don't think it necessarily admits or
15  opines or that I ever had knowledge of whether there
16  are cases that it wouldn't necessarily cover.
17  Q.       Could you please turn to Page 369 of your
18  note.
19  A.       What I would say, to finish that answer, is
20  that I would have wanted it to cover these other
21  situations, and so to the extent those other
22  situations existed, this would be imperfect.
23  Q.       So I'm going to direct you to the paragraph
24  that starts, "With these two steps."  And if you go
25  down to the sentence that begins with, "In other

Page 145

1  words."  Do you see that?
2  A.       Yes.
3  Q.       Okay.  Did you write on Page 369, "In other
4  words, his motivation is simply to enforce the law;
5  the racial categorization is a means rather than an
6  end."
7          Does that accurately reflect the statement
8  that you made on Page 369?
9  A.       Yes.
10  Q.       So is it true, Mr. Trende, that race is
11  sometimes used as a means to accomplish an aim?
12          MR. KERCHER:  Object to the form.
13  A.       I don't think so, because the last -- the
14  preceding sentence that we skipped over talks about
15  "assume a certain scenario."  So I'm discussing a
16  hypothetical.  Again, I wrote this 22 years ago.
17  Q.       Mr. Trende, did you read Dr. Roden's report
18  in this case?
19  A.       I saw it, and looked at portions of it.
20  I don't know that I read every word of it.
21  Q.       Do you plan to offer an opinion on
22  Dr. Roden's report in this case?
23  A.       I don't have plans to offer any particular
24  opinions.  I'll ask the questions that counsel --
25  I'll answer the questions that counsel asks me.

Sean P. Trende
September 02, 2022

Page 146

1                      - - -
2          And, thereupon, Plaintiff's Exhibit No. 10
3  was marked for purposes of identification.
4                      - - -
5  BY MS. ANDERSON:
6  Q.       Mr. Trende, the court reporter has handed
7  you what has been marked as Exhibit 10.  Mr. Trende,
8  what is the document that she just handed you?
9  A.       This is three tweets.
10 Q.       And when is it dated, the first one?
11 A.       December 14th, 2020.
12 Q.       And who drafted the tweet?
13 A.       I wrote the tweet.
14 Q.       And do you have any reason to believe that
15 this is -- to disagree with the fact that this is a
16 true and correct copy of your tweet?
17 A.       No, I don't have any reason to disagree.
18 Q.       And, Mr. Trende, does your tweet say, "Been
19 playing around with Texas maps, and it's pretty easy
20 to draw three new R districts, draw two minority
21 opportunity districts by making 7 and 32
22 minority-majority; make 23 majority-Trump, while
23 keeping around 66 percent Hispanic and make Texas 28
24 heavily Trump while keeping around 66 percent
25 Hispanic."

Page 147

1  A.       That's what it says, yes.
2  Q.       And, Mr. Trende, what data did you use to
3  draw the Constitutional districts that you discuss in
4  this tweet?
5  A.       Data's Redistricting App.
6  Q.       What data did you use in Data's
7  Redistricting App?
8  A.       Whatever Data's Redistricting Map makes
9  available.
10 Q.       Did you use racial data in drawing these
11 Congressional districts referenced in your tweet?
12 A.       I don't know.  There's a subsection of
13 Twitter called "Election Twitter" that likes to draw
14 maps and map out scenarios.  I think I drew a map in
15 Illinois that was, like, 16-1 Democratic, and one in
16 Ohio that it was 13 or 13-2 by taking every precinct
17 along I-71 and linking them together.  So I don't know
18 what I was doing.  This was for my own entertainment.
19 I know it's hard to believe for someone not in my line
20 of work how that could be entertaining, but...
21 Q.       And then, Mr. Trende, what do you mean by
22 your statement that "It's pretty easy" for you to draw
23 two new minority-majority Congressional districts in
24 Texas?
25 A.       That it wasn't difficult to make 7 and 32

Page 148

1  minority-majority, which I don't think they were in
2  the previous iteration.
3  Q.       And, Mr. Trende, did you draw any other
4  minority opportunity districts in Texas?
5  A.       I don't think so.  Again, this is something
6  that was done entirely for my own entertainment, so I
7  don't remember the specifics of it.
8  Q.       So you drew a new minority-majority
9  Congressional district in Harris County, correct?
10 A.       I turned 7 into one.
11 Q.       And what were the boundaries of 7 that you
12 drew?
13 A.       I have no clue.
14 Q.       Do you recall what it looked like?
15 A.       Not even a little bit.  I don't even
16 remember really doing this until you reminded me.
17 Q.       And what was the racial composition of the
18 new minority-majority Congressional district in Harris
19 County?
20 A.       I have no clue.  I did it for my own
21 entertainment.
22 Q.       Did you create -- Was the Hispanic CVAP over
23 50 percent in that district?
24 A.       I honestly have no idea.
25 Q.       And, Mr. Trende, you drew a new

Page 149

1  minority-majority Congressional district in the DFW
2  area, correct?
3  A.       It appears I turned 32 into a
4  minority-majority district.  That should probably --
5  Yeah, that's 32.  That's Olson's office.
6  Q.       And what did that district look like?
7  A.       I don't know.
8  Q.       Do you recall what the boundaries were?
9  A.       No.
10 Q.       What was the racial composition of the DFW
11 Congressional area district that was the new
12 minority-majority district?
13 A.       I have no idea.
14 Q.       Did you look at racial data in drawing the
15 DFW district?
16 A.       I would guess that, since I said it was
17 minority-majority, I would have checked the minority
18 population of it.
19 Q.       Is it also true for the new minority
20 opportunity district that you drew in Harris County?
21 A.       Since I said it was minority-majority, then
22 I would have at least looked at the output of the
23 district to see where it landed.
24          MS. ANDERSON:  Could we have a two-minute
25 break.

Sean P. Trende
September 02, 2022

Page 150

1        (Recess taken.)
2  BY MS. ANDERSON:
3  Q.        Mr. Trende, are there any deposition answers
4  that you wish to change so far?
5  A.        None that I can think of.
6  Q.        Is there anything that you would like to add
7  so far so we can better understand your answers?
8        MR. KERCHER:  Object to the form.
9  A.        Nothing I can think of.
10        MS. ANDERSON:  Pass the witness.
11        MS. PERALES:  I need a minute to change
12  seats so I can get closer to the witness.
13        Can we go off the record, please.
14        (Recess taken.)
15              - - -
16            EXAMINATION
17  BY MS. PERALES:
18  Q.        Good afternoon, Mr. Trende.  My name is Nina
19  Perales; and I represent the League of United Latin
20  American Citizens, LULAC, and other Latino
21  organizations and individuals in Texas.
22        I know it's late in the afternoon, so
23  I apologize in advance if I wear on your patience or
24  the patience of your counsel, but I'll try to be as
25  efficient as possible and not repeat any questions

Page 151

1  that have been asked so far.
2        If you would turn to Exhibit 1, which is
3  your report, and go to Page 6 of that report, please.
4        Here's a question for you:  Have you ever
5  taken a deposition?
6  A.        Yes.
7  Q.        Okay.  So this is the part of the deposition
8  where I point to certain language and ask a couple of
9  questions about it.  In particular, if you would look
10  at the last paragraph on Page 6 titled, Scope of
11  Engagement, would it be correct to say that, first,
12  you describe that you've been retained by the Attorney
13  General of Texas on behalf of Defendants "...to
14  evaluate Texas's Congressional State Senate and State
15  House Districts enacted by the Texas legislature and
16  signed by the State's Governor, Greg Abbott."  And
17  then it goes on from there.  Do you see that language
18  there?
19  A.        Yes.
20  Q.        Okay.  And so my question for you has to do
21  with the last sentence on Page 6.  Is it correct to
22  say that you write in your report, "In the course of
23  this, I respond to points made in the expert reports
24  of Dr. Jay Morgan Kousser, Dr. Moon Duchin,
25  Dr. Christina Morales, and Mr. George Korbel"?  Did I

Page 152

1  read that correctly?
2  A.        I think that's the second-to-last sentence.
3  But yes.
4  Q.        You're absolutely right.  Thank you.
5        And so my question for you -- Well, let's go
6  to Page 7 because there's something very similar on
7  Page 7, if you wouldn't mind.  The second bullet in
8  the Summary of Opinions, did you write there, "The
9  Plaintiffs' alternative maps typically function only
10  by stitching together non-compact minority populations
11  from disparate areas of the region"; is that correct?
12  A.        Yes.
13  Q.        Okay.  Thank you.
14        Did you evaluate the LULAC plaintiffs'
15  alternative maps?
16  A.        I did examine those maps, yes.
17  Q.        You examined them.  Did you provide any
18  discussion in your report of the LULAC plaintiffs'
19  alternative maps?
20  A.        No.  Not directly.
21  Q.        Okay.  Then tell me what you did do.  If it
22  wasn't direct, if it was indirect or otherwise.
23  A.        Well, the dotplots that are provided of the
24  racial composition of the areas can be used to
25  evaluate the Morales or to illustrate the Morales

Page 153

1  LULAC maps as well.  But for a more thorough examining
2  of them, I simply ran out of time.
3  Q.        So you mentioned a moment ago a more
4  thorough examining.  Would it be fair to say that your
5  report does not present any maps that were in the
6  Morales report?
7  A.        That's correct.
8  Q.        And would it be fair to say that your report
9  does not include any analysis of the maps presented in
10  the Morales report?
11  A.        Not directly.
12  Q.        And when you say "not directly," you mean
13  because you provided the dot maps of, for example,
14  population of certain racial groups in certain
15  geographies; is that right?
16  A.        That's correct.
17  Q.        Would it be fair to say that you do not have
18  any analysis in your report that opines on the maps in
19  Dr. Morales's report in light of the dotplots?
20  A.        I'm sorry.  Can you repeat that?
21  Q.        That was a bad question.
22        Would it be fair to say that there is no
23  analysis in your report of your dotplots with the maps
24  presented in Dr. Morales's report?
25        MR. KERCHER:  Object to the form.

Sean P. Trende
September 02, 2022

Page 154
1    You can answer, if you understand.
2  A.      Yeah.  I think there's not, for example, a
3  direct overlay of Dr. Morales's report or maps over
4  the dotplot or a description that way.
5  Q.      Would it be fair to say that you only
6  mentioned Dr. Morales's name twice in your 209-page
7  report?
8          MR. KERCHER:  Object to the form.
9          You can answer.
10 A.      I have to be honest.  I don't know.
11 Q.      Okay.  So we did look at Page 7 a moment
12 ago.  And then before that, we looked at Page 6.
13 Would you agree with me that on Page 6, in the second
14 line from the bottom thereabouts, you say
15 "Dr. Christina Morales"?
16 A.      Yes.
17 Q.      And if you would turn with me to Page 115,
18 under the heading F, Demonstration Minority Districts,
19 do you see the line below that that mentions
20 Drs. Duchin and Morales?
21 A.      Yes.
22 Q.      Are you aware of any other part of your
23 report that mentions Dr. Morales?
24 A.      No.
25 Q.      And I believe we have already covered, there

Page 155
1  is nowhere in your report where you present the maps
2  that were shown in Dr. Morales's report?
3          MR. KERCHER:  Object to the form.
4  A.      That's correct.
5  Q.      So I'll be completely honest.  Here's my
6  dilemma.  I don't know whether you're planning to
7  testify about the maps offered by the LULAC
8  Plaintiffs, so I will ask you simply, sitting here
9  today, do you plan to present any analysis at trial of
10 the maps in Dr. Morales's reports?
11         MR. KERCHER:  Object to the form.
12 A.      And I regrettably cannot answer that
13 directly because, as I've said, I don't have
14 intentions on what I'm going to testify to.  The
15 lawyers will ask me the questions, and I will answer
16 them subject to whatever objections the court rules
17 on.
18 Q.      Understood.  But sitting here today, do you
19 have any knowledge that you will testify on the maps
20 presented in Dr. Morales's report?
21         MR. KERCHER:  Objection to the form.
22 A.      Again, I don't have knowledge one way or the
23 other about the things I'm going to testify to.  That
24 would include Dr. Morales's analysis of the LULAC
25 maps.

Page 156
1  Q.      Do you plan to testify outside the bounds of
2  your report?
3          MR. KERCHER:  Object to the form.
4  A.      I don't have any plans to testify that way,
5  but I don't know the questions I'll be asked and how
6  the court might rule on any objections.
7  Q.      If you do testify regarding the maps
8  presented in Dr. Morales's report, would you agree
9  with me now that that would be testimony outside of
10 the bounds of your reports?
11         MR. KERCHER:  Object to the form.
12 A.      Well, as I've said, I think there are
13 applications of the dotplots to Dr. Morales's apps
14 that could be made.  I don't say that as some sort of
15 a tell, that I think the lawyers are going to ask me
16 about that.  But I think there are ways that they are
17 still relevant to the maps.
18         If my lawyers -- or if the lawyers were -- I
19 don't know if they are my lawyers or not under the new
20 privilege that wasn't around when I was practicing.
21 But as the lawyers for the attorney -- if the lawyers
22 for the Attorney General's Office ask me questions on
23 any subject that I'm able to answer, and the court
24 were not to overrule an objection, I would try to
25 answer them.

Page 157
1  Q.      Understood.
2          However, my question is a little bit
3  different.  You've testified that it's possible to use
4  your dotplots and overlay Dr. Morales's districts from
5  her reports and offer observations or evaluations of
6  that; but you've also testified that you haven't done
7  that in your report.
8          So my question is whether you would agree
9  with me that if you did testify about the
10 relationship, for example, between the dotplots and
11 the boundaries of the maps in Dr. Morales's report,
12 that that would be testimony outside the bounds of
13 your reports?
14         MR. KERCHER:  Object to the form.
15 A.      And I think that would be a legal analysis
16 that you would probably object to vociferously, and I
17 don't know how the court would rule on it.  I don't
18 know if the lawyers for the State would even ask me
19 something to that effect.
20 Q.      Understood.
21         MS. PERALES:  I have to object as
22 nonresponsive.
23 BY MS. PERALES:
24 Q.      I'm asking you for a "yes" or "no," whether
25 you would agree with me that the testimony that I

Sean P. Trende
September 02, 2022

Page 158

1   described, if you were to testify at trial regarding
2   the relationship between the dotplots and the maps
3   presented in Dr. Morales's report would be testimony
4   outside of what you have presented in your report?
5          MR. KERCHER:  Objection to the form.  Asked
6   and answered.
7   A.       I don't know.
8   Q.       When you looked at what you referred to as
9   alternative maps in your report, did you analyze any
10  alternative maps for districts that contained
11  50 percent or more Hispanic Citizen Voting Age
12  Population?
13  A.       As I sit here, I don't know.
14  Q.       On Page 6, you've used language about
15  responding to points made, and then you mentioned
16  Dr. Christina Morales.  Can you tell me what points
17  made by Dr. Christina Morales that you responded to in
18  your report?
19  A.       No.
20  Q.       Going back to Page 115 of your report, just
21  at the top of the page where you mention Dr. Morales
22  evaluating alternative maps for Dallas/Fort Worth,
23  Houston, and southeastern Texas, can you tell me what
24  is southeastern Texas?
25  A.       I think for that -- so East Texas would be a

Page 159

1   region, you know, split basically by east of
2   Fort Worth down to the Gulf Coast.  So southeastern
3   Texas would be something I had in mind distinct from
4   that south and east of Houston down to Corpus Christi.
5   Q.       We might call that "the coastal bend," or at
6   least part of it.  Might not go quite that far north.
7   But I think I understand what you're suggesting:
8   South of Houston, north of Corpus.
9          MR. KERCHER:  Object to the form, if that's
10  a question.
11         MS. PERALES:  It's not.  I'm buying time so
12  I can write a note, Mr. Kercher.
13  BY MS. PERALES:
14  Q.       Did you look at any alternative proposed
15  districts outside of this geographic area,
16  Dallas/Fort Worth, Houston, and southeastern Texas?
17  A.       Yes.
18  Q.       Give me an example of an alternative
19  proposed district that you looked at outside this
20  region.
21  A.       I believe Dr. Duchin offered an alternative
22  proposed district based in Lubbock.
23  Q.       So when you mentioned that on Page 115,
24  that's just the beginning of this section.  But you go
25  on to do other analyses as well; is that right?

Page 160

1   A.       Yes.
2   Q.       Okay.  Would it be correct to say you did
3   not do any analysis of the Enacted State Board of
4   Education Redistricting Plan?
5   A.       Yes.
6   Q.       Would it be correct to say that you did not
7   do any analysis of LULAC plaintiffs' proposed State
8   Board of Education districts?
9   A.       Yes.
10  Q.       Did you review the rebuttal report of
11  Dr. Morales?
12  A.       I think I skimmed it, but I don't know that
13  I read every word of it.
14  Q.       Do you have any opinions about the rebuttal
15  report of Dr. Morales sitting here today?
16  A.       I would have to look at the report, but none
17  that I can think of off the top of my head.
18  Q.       In your report, aside from the two mentions
19  of Dr. Morales's name that we've covered on Page 6 and
20  115, would it be fair to say that you do not discuss
21  the contents of the expert reports of Dr. Morales?
22         MR. KERCHER:  Object to the form.
23  A.       Not directly.  There may be things that bear
24  on it at other points in my report.  But not a direct
25  engagement of it, no.

Page 161

1   Q.       So what parts of your report would bear on
2   the expert reports of Dr. Morales?
3   A.       Well, as I suggested, the dotplots can
4   provide insight about the populations of her maps.
5   But, for example, a large portion of her report is
6   showing, say, the rental rates in the districts; and
7   there's nothing about that.  Her use of the ACS data
8   is not something that I engaged with, which I recall
9   being the lion's share of her report.
10  Q.       So would it be fair to say that, beyond the
11  dotplots provided in your report, there is nothing
12  else in your report that bears on the reports of
13  Dr. Morales?
14         MR. KERCHER:  Object to the form.
15  A.       Well, I don't know exactly how lawyers might
16  want to use some of the testimony or whether it might
17  bear on it once Dr. Morales testifies, or some of the
18  fact witnesses testify.  I can't speculate on any of
19  that.
20         So when you say, Does it bear on it?
21  I can't foreclose them from using it in a particular
22  way, but that the dotplots are the way I can think of
23  that the report might be relevant to Dr. Morales's
24  report.
25  Q.       And I only use the term "bear on" because

Sean P. Trende
September 02, 2022

Page 162

1  I believe you've used the term "bear on."  So I was
2  hoping to use your vocabulary there.
3          So putting aside what lawyers might or might
4  do, is it fair to say then that, from your
5  perspective, the dotplots are what could potentially
6  touch on what is in Dr. Morales's reports?
7          MR. KERCHER:  Object to the form.
8  A.       As I sit here today, that's what I could
9  see.  Yes.
10 Q.       Would you agree with me that the compactness
11 of Enacted Districts in a state shows us what a state
12 considers acceptable for compactness of districts?
13         MR. KERCHER:  Object to the form.
14 A.       At least in some context, yes.
15 Q.       And when you say "some context," what is
16 outside?  What are the contexts outside of my
17 statement?
18 A.       Well, a state is probably right -- it is
19 probably drawing its maps with, if there is any, state
20 constitutional considerations of compactness in mind.
21         There could also be a federal standard for
22 compactness under the Voting Rights Act which wouldn't
23 necessarily have to be conterminous with the state
24 line or the state definition.
25         If the State didn't think a certain area was

Page 163

1  protected by the Voting Rights Act, they might see
2  something as acceptable for compactness that wouldn't
3  be acceptable in the VRA context.
4          Or to use another example, if you were
5  drawing a district in Louisiana, and the State wanted
6  to draw a district across the southern border and up
7  the western border, I would imagine they have no
8  problem with that.
9          But if you wanted to draw it up the eastern
10 border and across the northern border, even with
11 similar degrees of compactness, the State might be
12 weary of that since they would be drawing the district
13 substantially similar to what was struck down by the
14 Supreme Court in the 1990s.  So there are ways that I
15 might think it could be different.
16 Q.       Let's put aside the consideration of race
17 for a moment and attempt to comply or not comply with
18 the Voting Rights Act.  Would you agree with me that
19 the compactness of Enacted Districts that are not
20 majority-minority shows us what the State considers
21 acceptable for compactness generally?
22         MR. KERCHER:  Object to the form.
23 A.       At least to the -- within the boundaries of
24 any state restrictions, yes.
25 Q.       Would you agree with me that when a State

Page 164

1  Enacted District -- let's assume it's not a
2  majority-minority district, even if it's less compact
3  than the average, the State still believes that people
4  in that district share enough common interests to
5  warrant bringing them together in a district, correct?
6          MR. KERCHER:  Object to the form.
7  Speculative.
8  A.       If the State is trying to draw a political
9  gerrymander, they might be trying to do the opposite
10 of that; draw in people who have opposing interests.
11 So I'm not sure I could agree with that.
12 Q.       Is it also possible that a State could draw
13 a district that's less compact than the average
14 because the State does believe that people in that
15 district share enough common interests to be brought
16 together?
17         MR. KERCHER:  Same objection.
18 A.       In an abstract sense, it could be possible.
19 Yes.
20 Q.       Are you familiar with the term "Texas
21 Legislative Council"?
22 A.       No.
23 Q.       Have you relied on in your work in this
24 case, any reports provided by the Texas Legislative
25 Council, also known as the TLC?

Page 165

1  A.       Not that I know of.
2  Q.       Are you aware of the term Red Appel as a
3  redistricting software in Texas?
4  A.       Yes.
5  Q.       Do you know if Red Appel is provided by the
6  Texas Legislative Council?
7          MR. KERCHER:  Object to the form.
8  A.       I don't know.
9  Q.       Are you aware of whether users of Red Appel
10 are able to see compactness scores generated for them
11 by the system?
12         MR. KERCHER:  Same objection.
13 A.       I believe Mr. Korbel suggested that is the
14 case.  I don't know whether it's correct or not.
15 Q.       Do you have any reason to doubt reports or
16 data provided by the Texas Legislative Council on
17 compactness of districts?
18         MR. KERCHER:  Object to the form.
19 A.       I don't know anything about them, so I don't
20 have any reason to believe or disbelieve it.
21 Q.       Would you agree that people who live in the
22 same city can share common interests?
23         MR. KERCHER:  Object to the form.
24 A.       People who live in the same city can share
25 common interests.

Sean P. Trende
September 02, 2022

Page 166

1  Q.      And would you agree with me that people who
2  live in the same county can share common interests?
3          MR. KERCHER:  Same objection.
4  A.      People who live in the same county can share
5  common interests.
6  Q.      It's correct to say that you don't offer any
7  numerical standard by which to evaluate the point at
8  which a majority-minority district's compactness score
9  indicates that it's a racial gerrymander, correct?
10 A.      That's correct.
11 Q.      Other than looking at the dotplot, would it
12 be fair to say that you do not have an objective
13 standard to evaluate whether a minority community is
14 sufficiently compact to meet the Gingles 1 standard?
15         MR. KERCHER:  Object to the form.
16 A.      I think there is no objective standard
17 offered whether you're doing it by district shape or
18 by population.  As I said earlier, this is, as Justice
19 O'Connor put it, an area where appearances matter.
20 Q.      Does compactness depend only on geographic
21 dispersal of a population?  Let me rephrase that.
22         Does compactness of a minority community
23 depend only on geographic dispersal?
24         MR. KERCHER:  Object to the form.
25 A.      No.  So you could have a situation where you

Page 167

1  have a minority community that is a perfect ball in
2  the middle of a district, a perfect center, with no
3  white voters in the middle of it.  It's compact as it
4  could possibly be.  If they were not culturally
5  cohesive, I believe you would still have compactness
6  issues.
7  Q.      And now, let me explore the inverse with
8  you.  Is it also possible that a minority community
9  could not have a compactness issue if they had a lot
10 of cultural cohesion, high cultural cohesion, but were
11 somewhat geographically dispersed?
12         MR. KERCHER:  Object to the form.
13 A.      I wouldn't consider that a compact
14 population, but I don't know what the legal standard
15 on that is.
16 Q.      So, in your view, compactness for Gingles 1
17 purposes depends both on geographic dispersal and
18 cultural cohesion?
19         MR. KERCHER:  Object to the form.
20 A.      I think, given LULAC, you can have something
21 that a state tries to shoehorn together where groups
22 are dispersed, but they're culturally dissimilar.
23 My understanding of that decision is that that is not
24 enough to satisfy prong one of Gingles.  I don't know
25 Fifth Circuit case law, and I can't think of

Page 168

1  Supreme Court case law that has fleshed out the
2  situation you're describing where you have dispersed
3  minority populations and they are culturally cohesive.
4  I suspect we'll get some insight in that by the end of
5  this Supreme Court term.
6  Q.      So I moved on from that question, and
7  I'm just curious whether, in your view, compactness
8  for Gingles 1 purposes requires that there's a
9  geographic component, a dispersal aspect to this, as
10 well as a cultural cohesiveness aspect.
11         MR. KERCHER:  Same objection.
12 A.      So that's the scenario I was talking about
13 in my last answer.  And, like I said, I don't know.
14 I don't think the Supreme Court has weighed in on that
15 answer, and I don't know Fifth Circuit case law.  But
16 for my just personal opinion, whatever it's worth, if
17 we return to the situation that I outlined earlier in
18 the deposition where you have a square, and the
19 minority population is perfectly dispersed to the
20 corners of the square, I don't think you would satisfy
21 Gingles' population compactness requirements in that
22 scenario.
23 Q.      Is there a relationship in your mind between
24 geographic dispersal and cultural cohesion such that
25 one could balance out the other at least to some

Page 169

1  degree?
2          MR. KERCHER:  Object to the form.
3  A.      That's not something I've considered.
4  Q.      Now, I understood from your earlier
5  testimony that you plotted in your dotplots Citizen
6  Voting Age Population when you were plotting
7  Hispanics; is that correct?
8  A.      That's correct.
9  Q.      Just to be clear, that means that the dots
10 omitted or excluded any Hispanic people who are not
11 U.S. citizens, as well as any Hispanic people under
12 the age of 18, correct?
13 A.      That's correct.
14 Q.      Would you agree with me, then, that if you
15 did plot total population for Hispanics in your
16 dotplots, that it is possible that non-U.S. citizens
17 and children of Hispanic origin could fill in some of
18 the spaces between the dots on your charts?
19         MR. KERCHER:  Object to the form.
20 A.      I don't know.  There may be facts in
21 evidence that exclude that possibility at other points
22 in this case.  I'm not 100 percent sure, but I can
23 imagine, I guess, a scenario.
24 Q.      Do you think that there are places in Texas
25 where children and non-U.S. citizen Hispanics

Sean P. Trende
September 02, 2022

Page 170

1  outnumber the Hispanic Citizen Voting Age Population?
2          MR. KERCHER:  Object to the form.
3  A.       I don't know.  I can see the scenario where
4  that could be true, but I don't know if it has
5  occurred in practice.
6  Q.       Turn with me, if you would, to Page 102 of
7  your report.  If you would look with me at the fourth
8  line of the paragraph titled South Texas.  Is it
9  correct to say that you wrote here on this line, "The
10 area moved toward the GOP in 2020"?
11 A.       Yes.
12 Q.       In your paragraph, you mentioned
13 San Antonio, but you also mentioned the border.  So
14 when you say south Texas here, do you mean San Antonio
15 and the border region?
16         MR. KERCHER:  Object to the form.
17 A.       I'm referring to the districts, and the
18 south Texas districts now reach up to Bexar County.
19 Q.       And in your last answer, when you say
20 "districts," do you mean Congressional Districts?
21 A.       That is correct.
22 Q.       So here, when you say that the area moved
23 toward the GOP in 2020, what election contests do you
24 base that statement on?
25 A.       I'm talking about the Presidential Election.

Page 171

1  Q.       Trump versus Biden; is that correct?
2  A.       That's correct.
3  Q.       Also, on this page, if we look at the very
4  last sentence, is it correct that you wrote, "The
5  districts, as drawn, are consistent with Republicans
6  trying to leverage that emerging strength."
7  A.       Yes.
8  Q.       What do you mean by the term "emerging
9  strength"?
10 A.       That Republicans are performing better in
11 recent elections in south Texas districts than they
12 have previously.  I believe in 2012, the 34th District
13 went for Barack Obama by about 20 points.  It was a
14 narrowly Joe Biden district in 2020, and then it
15 elected a Republican.  So I would consider that
16 emerging strength.
17 Q.       Which districts are you referring to in the
18 sentence that have been drawn to leverage that
19 emerging strength?
20 A.       I would be referring to 15, 28, and then
21 34 would be part of that process; although, 34 is made
22 more Democratic.
23 Q.       Also, didn't you also observe that 28 is
24 made more Democratic?
25 A.       Did I?

Page 172

1  Q.       If you would look with me on Page 107.
2  I just need clarification because it may not be a
3  comment that you're making about the district overall.
4  But I noticed in the paragraph underneath the figures,
5  underneath figure 78, there is a little paragraph
6  there, and the last sentence says, "Changes to the
7  district lines enhance Democratic performance."
8  A.       Where are we?  Because 78 is District 34.
9  Q.       No.  Page 107.
10 A.       Figure 76.
11 Q.       I'm sorry.
12 A.       That clarifies it.  Thank you.
13 Q.       Under figure 76 you have a paragraph -- a
14 little paragraph that says, "Like much of south
15 Texas."  And then there is a sentence, if you would
16 read it with me, "Changes to the district's lines
17 enhanced Democratic performance here somewhat.  Biden
18 won."  Is that a comment about part of the change to
19 the district?
20 A.       No, you're right.  Democratic performance
21 here improved by seven-tenths of a percent.  I was
22 wrong.
23 Q.       If we go back to Page 102, would it be fair
24 to say then that, when you write that "The districts,
25 as drawn, are consistent with Republicans trying to

Page 173

1  leverage that emerging strength," you were speaking of
2  Congressional District 15?
3  A.       I still don't think that's right.  Because
4  as I noted, District 34 is part of that effort, even
5  though it's made more Republican -- Democratic which
6  Republicans may regret now.  It is still -- Keeping
7  that district at 53.5 percent Biden keeps it in play
8  for Republicans and it would be part of that strategy.
9  Q.       And so the district you're talking about
10 keeping in play is 28?
11 A.       That would be kept in play by keeping
12 Biden's vote share within a point or two of his
13 national performance.
14 Q.       I understand.
15          So to summarize, 15 is made more Republican
16 as part of the effort to leverage the emerging
17 strength, and 28 is kept in play by maintaining its
18 Biden numbers, and 34 is made more Democratic?
19         MR. KERCHER:  Objection to the form.
20 BY MS. PERALES:
21 Q.       Is that correct?
22         MR. KERCHER:  Same objection.
23 A.       That is my recollection.
24 Q.       With respect to Congressional District 15,
25 what did Texas redistricters do specifically to make

Sean P. Trende
September 02, 2022

Page 174

1  it more Republican?
2  A.        Well, that is laid out in the full paragraph
3  on Page 104.  It takes in 186,725 residents from the
4  28th; 53,071 residents from the 34th that are around
5  55 percent Trump.  Well, there you go.  Voted
6  55 percent for Trump overall.  It gave 89,000
7  residents to the 28th, and 192,000 to the 34th.
8          The ones going to the 28th were Republican
9  as well.  But the residents going to the 34th were
10  heavily Democratic, making the district on balance
11  more Republican.
12  Q.        You include a figure here of 73 that shows
13  changes to 15 in the southern end of the district; is
14  that right?
15  A.        That's correct.
16  Q.        We don't have a corresponding figure for
17  changes made to the northern end of the district; is
18  that right?
19  A.        I think I did it that way because you can
20  see the changes to the northern end of the district in
21  figure 79.
22  Q.        Figure 79 is District 34?
23  A.        Yeah.  And I think that's where the 15th, at
24  least, takes most of its new residents from in the
25  northern end of the district.  Also 77.

Page 175

1  Q.        Okay.  77 and 79 together give us a picture.
2          Turn, if you would, to Page 195 of your
3  report.  Do you see where you say there, "In the 2021
4  Special Election, Republicans picked up District 118"?
5  That's in the middle paragraph, last sentence.
6  A.        I do see that.
7  Q.        District 118 is a Latino-majority district
8  in Bexar County, correct?
9  A.        I don't know.
10  Q.        Do you view the election of the Republican
11  candidate John Lujan in the 2021 Special Election in
12  House District 118 to be evidence of Latino voters
13  shifting to vote Republican?
14          MR. KERCHER:  Object to the form.
15  A.        I don't think I put anything in there one
16  way or the other.
17  Q.        Does that mean that you have no opinion
18  regarding whether the 2021 Special Election in 118
19  evidences Latino voters shifting to vote Republican?
20  A.        Yes.
21  Q.        Let's go to Page 206 of your report.  Do you
22  see the section heading here in your report, Section
23  8, Recent Polling Data?
24  A.        Yes.
25  Q.        And in your report, you discuss, "A sharp

Page 176

1  shift of Hispanic voters toward the Republican
2  Party."  Do you see that in the third line of the
3  second paragraph?
4  A.        Yes.
5  Q.        So I'm curious about this section of your
6  report.  Were you asked to write this section of your
7  report after you were asked to write the other
8  sections of your report looking at the alternative
9  maps?
10          MR. KERCHER:  Objection.  That's an
11  attorney-client communication.  It's a Rule 26
12  communication.  It's privileged.  I'll instruct the
13  witness not to answer.
14  BY MS. PERALES:
15  Q.        When did you write this Section 8?
16          MR. KERCHER:  Object to the form.
17          You can answer.
18  A.        In the course of writing my report.
19  Q.        Towards the end or toward the beginning?
20  A.        It's Section 8, so it would have been
21  written towards the end.
22  Q.        Well, only if you wrote the report from what
23  we see now as the beginning to the end.  But I'm more
24  curious about the time when you wrote Section 8.  Did
25  you write Section 8 at a time later than the preceding

Page 177

1  sections of your report?
2          MR. KERCHER:  Object to the form.
3  A.        This report was written in order, so that's
4  why I said it's written at the end.  It would be
5  toward the end of the process.
6  Q.        Okay.  So this section which begins on
7  Page 206, and ends on Page 208, you wrote last in
8  terms of the sections of your report; is that right?
9  A.        Yes.
10  Q.        What's the connection between this
11  discussion of Hispanics shifting to the Republican
12  Party and the other observations in your report about
13  how the redistricting plans were drawn?
14          MR. KERCHER:  Object to the form.
15  A.        I don't know.
16  Q.        Is this last section here, Section 8, a
17  continuation of your observations that south Texas
18  Congressional Districts were drawn to leverage the
19  emerging strength of the Hispanic Republican vote?
20          MR. KERCHER:  Object to the form.
21          You can answer.
22  A.        I think it's relevant to it, but I don't
23  know that it's a direct outgrowth of it.
24  Q.        Now, sticking with Page 206 specifically,
25  okay.  Second paragraph, second sentence that begins

Sean P. Trende
September 02, 2022

Page 178
1  with the word, "Specifically," do you see that there?
2  A.      Uh-huh.
3  Q.      So, first of all, before we read it
4  together, after the word "specifically," comma --
5  I'm having a hard time even talking through this --
6  we have the word "one," and then we have the word
7  "one" again.  Should we only have one "one" there?
8  A.      Yes.
9  Q.      And then, as we move along, there's a
10  reference to the 2022 election, and I'm wondering if
11  that was supposed to be the 2020 election.
12  A.      Yes.
13  Q.      Okay.  So then what this sentence means to
14  say, on Page 206, is that, "Specifically, one of the
15  most remarked-upon aspects of the 2020 Election was
16  the sharp shift of Hispanic voters toward the
17  Republican Party."  Would that be right?
18  A.      Yes.
19  Q.      Then you go on to say that, "This occurred
20  nationally.  Although, as described above, it was
21  particularly prominent in the Rio Grande Valley."  Did
22  you write that?
23          MR. KERCHER:  Object to the form.  You
24  skipped a portion of the sentence.
25  BY MS. PERALES:

Page 179
1  Q.      But did you write the words "particularly
2  prominent in the Rio Grande Valley"?
3          MR. KERCHER:  Same objection.
4  A.      Yes.
5  Q.      So then would it be correct to say that this
6  specific discussion of Hispanics voting more for the
7  Republican Party supports your overall opinion that
8  the Texas redistricting plans were drawn to advance
9  Republican interests?
10          MR. KERCHER:  Object to the form.
11  A.      I think you can use it that way, yes.
12  Probably.
13  Q.      Do you know whether Texas redistricters were
14  aware that the south Texas Congressional Districts
15  were Latino majority?
16          MR. KERCHER:  Object to the form.
17  A.      I would speculate that that's the case.
18  Q.      Did you have any communications with Texas
19  redistricters and by -- Specifically, I mean
20  legislators or their staff, from, let's say,
21  January 1, 2021, to the present?
22          MR. KERCHER:  Object to the form.
23  A.      Not to my knowledge.
24  Q.      Do you know Adam Fultzs?
25  A.      I don't believe so.

Page 180
1  Q.      Do you know who Adam Fultz is?
2  A.      No.
3  Q.      Did you know who drew the 2011 Wisconsin
4  legislative map?
5          MR. KERCHER:  Object to form.
6  A.      The 2011?
7  Q.      Yeah.
8  A.      I thought that was the guy that --
9  Keith Gatte.
10  Q.      How about to the previous round?  Do you
11  know who drew the Wisconsin map?
12          MR. KERCHER:  Same objection.
13  A.      No.
14  Q.      Do you know who was in competition with you
15  for the Virginia Special Master Job?
16          MR. KERCHER:  Object to the form.
17  A.      I don't think -- I don't know if it was a
18  competition, but I'm not sure who was the winner.  But
19  the -- I know in the -- I don't know who the first
20  slate of candidates that were named by the party, the
21  court projected were.  I think, for myself -- For the
22  second round, it was myself, Doug Johnson, and maybe
23  Justin Levitt, but not the one who is a law professor.
24  Q.      Do you know Adam Kincaid?
25  A.      Yes.

Page 181
1  Q.      Have you ever spoken to Adam Kincaid about
2  the Texas redistricting map since, say, January 1 of
3  2021?
4  A.      I don't believe so.
5  Q.      Have you ever heard of Chris Gobert?
6  A.      No.
7  Q.      Do you know what information the
8  redistricters in Texas who drew the state-wide plans
9  had about Hispanics voting either Republican or
10  Democrat when they redrew the plans?
11          MR. KERCHER:  Object to the form.
12  A.      I don't know.
13  Q.      Did you see any documents related to
14  redistricting that were also seen by the redistricters
15  who drew the Texas state-wide plans, to the best of
16  your knowledge?
17          MR. KERCHER:  Object to the form.  Calls for
18  speculation.
19  A.      I don't know.
20  Q.      Let's talk about the statement about the
21  sharp shift of Hispanic voters toward the Republican
22  Party.  What is the evidence that you used to make
23  this statement?
24  A.      Well, the statement is that it's one of the
25  most remarked upon aspects of the 2020 Election, and

Page 182

1  so that is certainly my experience from discussions
2  with people who analyze elections.  I have the example
3  of this New York Times article written on it, but
4  I think an awful lot of people were surprised to see
5  Starr, S-T-A-R-R, and Zapata, Z-A-P-A-T-A -- but
6  I'm sure I'm butchering the proper pronunciation of
7  that -- Counties doing what they did.
8  Q.       Okay.  So what I've heard you say is
9  speaking to political observers, The New York Times
10 article and the results for Trump in Starr and Zapata
11 Counties; is that right?
12 A.       Yes.
13 Q.       Now, does The New York Times article address
14 voting by Hispanics in the Rio Grande Valley?
15 A.       I don't know.
16 Q.       You also in your report cite a paper
17 authored, and I'm going to completely butcher this
18 name, Kuriwaki, and then Dr. Ansolabehere and others;
19 is that right?  You have a cite to that article on
20 Page 206; is that right?
21 A.       Yes.
22 Q.       Now, with respect to that article, the
23 authors of the paper did not run Ecological Inference
24 on votes cast by a Spanish surname, correct?
25 A.       That's correct.

Page 183

1  Q.       And for their data, the authors used the
2  2016 and 2020 CCES, which is the Cooperative
3  Congressional Election Study, correct?
4  A.       Correct.
5  Q.       And the CCES is a survey in which
6  individuals self-report their race and their candidate
7  choice; is that correct?
8  A.       Correct.
9  Q.       And the paper that you cite only focuses on
10 the Presidential race of 2016 and then 2020, correct?
11 A.       Correct.
12 Q.       And because it's a survey, there are only
13 about 125 respondents per Congressional District,
14 correct?
15 A.       Correct.
16 Q.       Do you recall that paper saying that there
17 were only 13 voting respondents who are nonwhite on
18 average for each Congressional District?
19 A.       I do not.
20 Q.       And that paper concluded that there was an
21 increase among Hispanics in Texas from 2016 to 2020 in
22 the vote for Trump, correct?
23 A.       I believe that's correct.  Yes.
24 Q.       Now, going over onto Page 207, you list some
25 districts where the paper that you cite says, "Latinos

Page 184

1  and Anglos prefer the same Presidential candidate in
2  2016"; is that right?
3  A.       There are districts where the point
4  estimates are the same for whites.  And Hispanics are
5  almost the same.
6  Q.       So I'd like to talk to you about some
7  districts that are not on this list.  Would you agree
8  with me that Congressional District 15 is not on the
9  list?
10 A.       That's correct.
11 Q.       And Congressional District 15 is in south
12 Texas, correct?
13 A.       Correct.
14 Q.       Congressional District 23 is not on the
15 list, correct?
16 A.       Correct.
17 Q.       And Congressional District 23 spans along
18 the U.S./Mexico border from El Paso to San Antonio,
19 correct?
20 A.       Yes.
21 Q.       Congressional District 28 is not on the
22 list, correct?
23 A.       Correct.
24 Q.       Congressional District 28 is also in south
25 Texas and touches the border, correct?

Page 185

1  A.       Correct.
2  Q.       Congressional District 34 is not on this
3  list, correct?
4  A.       That's right.
5  Q.       Congressional District 34 is in south Texas
6  and also touches the border, correct?
7  A.       Yes.
8  Q.       So excluding Congressional District 16,
9  which is in El Paso, the remaining Texas
10 border-touching districts are not on your list,
11 correct?
12 A.       Correct.
13 Q.       I'd like to talk about the election that you
14 mentioned on Page 206.  But before that, I just want
15 to talk about the very short reference that you had
16 about House District 118 electing a Republican in
17 Bexar County in a special election.  We had talked
18 about that a moment ago.
19       You had talked -- Do you want me to refer
20 you back to that page before I go --
21 A.       No.  If we're talking about the previous
22 section, I thought you were talking about it here, and
23 I was scratching my head.
24 Q.       No.  I just want -- The order in my outline
25 is just to start with District 118 in Bexar County,

Sean P. Trende
September 02, 2022

Page 186

1  the house district, which you mentioned on Page 195 of
2  your report as having elected a Republican in the
3  Special Election. Would it be fair to say that you
4  didn't do any analysis of the 2021 Special Election in
5  House District 118?
6  A.      Yeah. That's correct. And the purpose of
7  that discussion back on 195, or whatever the page was,
8  the purpose of the suggestion was simply to assign a
9  representative -- the party of the representative of
10  the districts, which is different than what appears in
11  the charts since it flipped. It's a clarification.
12  Q.      I see. But it is part -- Your discussion on
13  Page 195 is part of a discussion about strengthening
14  the Republican vote in House District 118 from the way
15  you've reported it as a Trump share of 43.07 to a
16  Trump share of 48.61, right?
17  A.      Correct. And I guess it is consistent in
18  this. I'm clarifying. The column is titled Winner,
19  2020 Election, and that's not precise. It would have
20  been a Democrat, so I clarified it actually flipped in
21  a special election shortly after the general.
22  Q.      But you didn't do any analysis to see who
23  was the Latino-preferred candidate in the 2021 Special
24  Election, correct?
25         MR. KERCHER: Object to the form.

Page 187

1  A.      That's right.
2  Q.      Okay. So then, let's go to Page 206. You
3  talk about Congressional District 15 on Page 206, and
4  you mention there that, in your words, Congressional
5  District 15 almost elected a Latino Republican in
6  2020. Do you see that?
7  A.      On Page 206?
8  Q.      I'm looking for it.
9  A.      Oh, I see it. Yes. Right at the bottom of
10  the second full paragraph. I've got it.
11  Q.      Yes. Okay. So with respect to that race,
12  the 2020 Congressional District 15 General Election,
13  what analysis did you perform of this election
14  contest?
15  A.      I said that it almost elected a Latino
16  Republican in 2020, and then a different district did
17  so in 2022.
18  Q.      Did you determine what percent of the voters
19  who cast ballots in this election were Latino?
20  A.      No.
21  Q.      Did you determine what percent of the voters
22  who cast ballots in this election were Anglo?
23  A.      No.
24  Q.      Did you determine who was the preferred
25  candidate of Latino voters in this election?

Page 188

1  A.      No.
2  Q.      Did you do any analysis of whether voting
3  was racially polarized between Latinos and Anglos in
4  this election?
5  A.      No.
6  Q.      Do you know whether the Latino Republican
7  was the preferred candidate of the Latino voters in
8  this race?
9         MR. KERCHER: Object to the form.
10         You may answer.
11  A.      No.
12  Q.      Now, also on Page 206, you talk about the
13  2022 Special Election in CD 34.
14  A.      Right.
15  Q.      You mentioned CD 34 did elect a Republican
16  in the 2022 Special Election, yes?
17  A.      Correct.
18  Q.      What analysis did you perform of this
19  election contest?
20  A.      Mayra Flores, who is a Latino Republican,
21  won it in the 2022 Special Election.
22  Q.      Did you determine what percent of the voters
23  who cast ballots in this election were Latino?
24  A.      I did not.
25  Q.      Do you determine what percent of the voters

Page 189

1  who cast ballots in this election were Anglo?
2  A.      I did not.
3  Q.      Were you aware that the turnout for this
4  election in this district was 7 percent?
5         MR. KERCHER: Object to the form. Assumes
6  facts not in evidence.
7         You may answer.
8  A.      I don't know what overall turnout was.
9  Q.      Did you determine who was the preferred
10  candidate of Latino voters in this election?
11         MR. KERCHER: Object to the form.
12  A.      No. It may be that these two districts were
13  no longer performing by the end of the decade.
14  I don't know if the minority candidate of choice
15  reliably won anymore.
16  Q.      Did you do any analysis to see if voting was
17  racially polarized in this election?
18  A.      No. Like I said, if someone did and showed
19  that the Democrat was the Latino candidate of choice,
20  I guess I would conclude these districts don't
21  reliably perform anymore. But I didn't do that
22  analysis.
23  Q.      And then, finally, just to ask the last
24  question, do you know if Mayra Flores was the
25  Latino-preferred candidate?

Sean P. Trende
September 02, 2022

Page 190

1      MR. KERCHER:  Object to the form.
2  A.      I don't know.
3  Q.      Okay.  Also in your report you mention that
4  Donald Trump won Zapata County in the 2020 General
5  Election.  Do you remember that?
6  A.      I do.
7  Q.      Did you examine whether the Republican in
8  the next race down on the ballot, which was U.S.
9  Senate, whether he won in Zapata County?
10  A.      No.  I think Grumbach, G-R-U-M-B-A-C-H, did
11  that and said that Cornyn got 40-some odd percent of
12  the vote, which would still be an historically high
13  vote share for a Republican in that county.  But I
14  didn't look at it at the time.
15  Q.      Did you look at any other results of the
16  2020 General Election in Zapata County, such as for
17  county-level races, like county judge, to see if a
18  Republican had won?
19  A.      I did not.
20  Q.      You also mentioned that Donald Trump almost
21  won in Starr County, correct?
22  A.      Correct.
23  Q.      Did you look to see how the Republican in
24  the next race down on the ballot did?
25  A.      I did not.

Page 191

1  Q.      Did you look at any local races, such as for
2  county judge, to see if the Republican candidate won?
3  A.      I did not.
4  Q.      Would it be correct to say, going back to
5  Zapata County, that if Donald Trump won the county,
6  but John Cornyn didn't, that at least some of those
7  voters were ticket splitting?
8      MR. KERCHER:  Object to the form.
9  A.      You'd have to look at the total number of
10  votes cast to say that because there could just be
11  people who left the race blank.  I don't know.
12  Q.      That's an excellent point.  Let me ask my
13  question again.
14      If Donald Trump won Zapata County, but
15  John Cornyn didn't, this would have to be the result
16  of either ticket splitting or ballot roll-off or some
17  combination?
18      MR. KERCHER:  Same objection.  Incomplete
19  hypothetical.  Foundation.
20      You can answer, if you know.
21  A.      As I sit here, those are the possibilities I
22  could come up with.  There may be more.
23  Q.      And that would -- the same would be true
24  also for Starr County, right?  If John Cornyn
25  underperforms Donald Trump, it's either ticket

Page 192

1  splitting, ballot roll-off or some combination, right?
2      MR. KERCHER:  Same objection.
3      You may answer, if you know.
4  A.      Yes, it's the same answer.  Those are the
5  explanations I could come up with as I sit here.
6  Q.      So it's correct to say, isn't it, that you
7  don't have any statistical evidence of Latino voters
8  shifting their partisan preferences to Republican
9  candidates in elections in south Texas?
10      MR. KERCHER:  Object to the form.
11  A.      I don't think that's true because I think
12  Starr and Zapata Counties are still -- are almost
13  unanimously Hispanic, so it's almost like a homogenous
14  precinct analysis there.
15  Q.      What percent of the voters who cast ballots
16  in the 2020 General in Zapata County were Hispanic?
17      MR. KERCHER:  Object to the form.
18  A.      I don't know.  But I believe the population
19  is something on the order of 96 percent in either that
20  or Starr.  I don't know for sure.
21  Q.      Based on what you saw in Starr and Zapata
22  Counties, is it possible that there was a Trump effect
23  that did not mean that Latino voters preferred other
24  Republican candidates aside from Mr. Trump?
25      MR. KERCHER:  Object to the form.

Page 193

1  A.      That was the careful analysis I think
2  immediately afterwards; that there had been a shift,
3  but perhaps it was Trump-driven.  I think the Special
4  Election in District 34 makes that less likely, given
5  how that district had historically voted.  But I guess
6  it's possible.  We'll know more after this election, I
7  suspect.
8      MR. KERCHER:  Ms. Perales, we've been going
9  for an hour and 15 minutes.  I wanted to check and see
10  whether anyone needed a break.
11      MS. PERALES:  I'm fine for a break at any
12  time that the witness wants to take a break.  It's
13  his --
14      MR. KERCHER:  Mr. Trende, keep going?
15      THE WITNESS:  Do you have a sense of how
16  much longer you're going to go?
17      MS. PERALES:  About 20 more minutes.
18      THE WITNESS:  I can make it 20.
19      MS. PERALES:  Thank you.
20  BY MS. PERALES:
21  Q.      Would it be fair to say that you don't have
22  any either regression or Ecological Inference Analysis
23  that shows that Latinos have shifted their partisan
24  preference either towards or away from Republican
25  candidates in south Texas?

Sean P. Trende
September 02, 2022

Page 194

1       MR. KERCHER:  Object to the form.
2   A.      That is true.  I did not do an Ecological
3   Inference Analysis or an Ecological Regression
4   Analysis.
5   Q.      Would you agree that a candidate, Democrat
6   or Republican, who wants to receive votes from Latino
7   voters has to appeal to issues of importance to
8   Latinos?
9       MR. KERCHER:  Object to the form.
10  A.      So this opens the whole what drives voters
11  discussion.  I think the issue-specific approach can
12  be helpful, but many voters are driven by valence
13  issues; general census of how parties and candidates
14  stand, much more than the intricacies of, you know,
15  what particular Medicaid reform plan you favor.
16  Q.      But Roe versus Wade might be a more
17  prominent issue that could potentially drive voters,
18  for example?
19      MR. KERCHER:  Object to the form.
20  A.      That's correct.
21  Q.      Have you done any analysis of the degree to
22  which Latino voters were voting Republican before the
23  last few years in south Texas?
24      MR. KERCHER:  Object to the form.
25  A.      I think I mentioned that 34th District,

Page 195

1   I believe, was Obama by 20, but I don't know the
2   numbers off the top of my head.  I think I've said
3   that the south Texas districts, if we were talking
4   about 2012, they were a lot more heavily Democratic or
5   more certainly Democratic than they are today.
6   Q.      But did you do any analysis of the Latino
7   voters themselves as opposed to the outcomes in
8   particular districts?  Have you done any analysis of
9   Latino voting patterns and the degree to which Latinos
10  were voting Republican before, say, the past five
11  years?
12      MR. KERCHER:  Object to the form.
13  A.      So going back to before 2017?
14  Q.      Yes.
15  A.      So, for example, the articles that
16  I'm citing talk about how Donald -- how Mr. Trump's
17  margin on the precincts shifted from 2016 to 2020.
18  That would be an analysis of that and the changes in
19  the exit polls during that time period.
20  Q.      And prior to that -- Let's take Mr. Trump
21  out of the picture.  Prior to that, have you done any
22  analysis of the degree to which Latinos vote
23  Republican prior to Mr. Trump's appearance on the
24  scene?
25      MR. KERCHER:  Same objection.

Page 196

1       You can answer.
2   A.      I know that Mr. Romney had had a -- I guess
3   now Senator Romney had an atrocious performance among
4   Hispanics.
5       George W. Bush, there is some dispute about
6   exactly how he did in 2004.  I don't think much of a
7   dispute in Texas.  But I think he has the best
8   performance in modern times for a Presidential
9   candidate.
10      I think I mentioned that I believe Cornyn,
11  at least according to exit polls, carried Hispanic
12  voters in Texas in 2014, or at least came very close.
13  Q.      It's correct to say, isn't it, that, in
14  order to draw districts to leverage Latino voter
15  strength, Texas legislators have to know which
16  candidates are preferred by Latino voters; don't you
17  agree?
18      MR. KERCHER:  Object to the form.  Calls for
19  speculation.
20  A.      To do it effectively, I think you have to
21  know.  But to try, I don't know.
22  Q.      Okay.  And then the inverse.  If the
23  legislators don't know which candidates are preferred
24  by Latino voters, legislators can't say that they are
25  increasing Latino opportunity to elect with any

Page 197

1   certainty, wouldn't you agree?
2       MR. KERCHER:  Same objection.  Calls for
3   speculation.
4   A.      It certainly is more difficult than if you
5   did know.
6   Q.      Would you agree with me that when voting is
7   polarized between Anglos and Latinos, that drawing
8   districts to achieve the election of the
9   Anglo-preferred candidate could result in reducing
10  Latino vote strength?
11      MR. KERCHER:  Objection.  Objection to the
12  form.
13  A.      I can see a scenario where that would be
14  true.  I don't think it's necessarily true.
15  Q.      But if Latinos and Anglos are pretty much
16  the only population groups in the district, it's like
17  a seesaw, isn't it?  If voting is racially polarized
18  and you're drawing the district to increase the
19  chances of the election of the Anglo-preferred
20  candidate, you're necessarily decreasing the chances
21  of the election of the Latino-preferred candidate,
22  aren't you?
23      MR. KERCHER:  Objection to the form.
24  A.      No.
25  Q.      Why not?

Page 198

1  A.       Because, as I understand polarization, it is
2  the average preference of the voters in the district
3  and the polarization metric, at least under current
4  Supreme Court guidance, is whether you are on opposite
5  sides of 50 percent.  So a 51/49 district would be
6  polarized.
7            So if you had a district where there is one
8  group of Hispanic voters that voted heavily
9  Republican, a small group, say 30 percent, and
10  70 percent of Hispanic voters voted heavily
11  Democratic, and you had a similar situation with
12  non-Hispanic whites and moved them around, I can
13  envision a situation where you're not necessarily
14  changing things in the way that you would predict.
15  Q.       So in that scenario, if you're moving things
16  around in order to increase the likelihood that Anglos
17  will elect their candidate of choice, aren't you
18  necessarily decreasing the likelihood that Latinos
19  will elect their candidate of choice when voting is
20  racially polarized?
21            MR. KERCHER:  Object to the form.
22  A.       See, I don't know if that's the case.
23  Thinking of my situation -- of my scenario where you
24  have very narrow polarization rates and you have, you
25  know, distinct groups that are 70/30 on each side.

Page 199

1  It's something I would have to noodle on, but it's not
2  something I can agree to off the top of my head.
3  Q.       Have you ever analyzed racially polarized
4  voting as part of your work?
5  A.       Yes.
6  Q.       What methodology did you use?
7  A.       We used Ecological Regression and Ecological
8  Reference.
9  Q.       Did you do that in Virginia?
10  A.       No.
11  Q.       Tell me when you did do it.
12  A.       In Arizona.
13  Q.       Was that in 2021/2022?
14  A.       Yes.
15  Q.       Okay.  And did you analyze racially
16  polarized voting as part of an attempt to comply with
17  the Voting Rights Act?
18            MR. SWEETEN:  I want to make sure this isn't
19  a purely consulting expert situation, or is this
20  something that you were a testifying expert?  Do we
21  need to discuss this?
22            THE WITNESS:  I was just going to respond
23  that Dr. Ansolabehere and I were -- And this
24  disclosed -- were consulting experts.  But I think our
25  names -- our names were disclosed, so I don't mind,

Page 200

1  you know, that much.
2            But we were consulting experts for counsel
3  to the Arizona Independent Redistricting Commission,
4  and I'm just not sure, without them being present --
5  I don't have a problem answering the question.
6  I'm just not sure, without them being present, how far
7  I can go and what's been waived and what hasn't.
8            MS. PERALES:  Can we go off the record?
9            (Discussion off the record.)
10            MS. PERALES:  We're back on the record.
11  BY MS. PERALES:
12  Q.       When you worked in Virginia on the House of
13  Delegates, the State Senate, and the U.S. Congress,
14  did your work involve attempts to achieve compliance
15  with the Voting Rights Act?
16  A.       Yes.  Well, yes.
17  Q.       Would you agree that if you're trying to
18  comply with the Voting Rights Act, it's important to
19  know where minority population is in the area that
20  you're redistricting?
21            MR. KERCHER:  Object to the form.
22  A.       It can certainly be helpful.  I think you
23  can inadvertently comply with the Voting Rights Act.
24  But it can be helpful.
25  Q.       Okay.  Would it be correct to say, if you

Page 201

1  draw a map blind to race, you cannot see where, for
2  example, Latinos are sufficiently numerous and compact
3  to comprise the majority of a new district?
4            MR. KERCHER:  Object to the form.  That's an
5  incomplete hypothetical.  Lack of foundation.
6            Mr. Trende, if you understand the question,
7  and you can answer it, then you may.
8  A.       So I wasn't asked to do anything like that
9  in this case.  But as a hypothetical exercise, I can
10  imagine a situation where you're drawing blind --
11  Let's say you have a -- You're doing Mississippi and
12  you're drawing blind to race, and you draw a district
13  that is anchored along the Mississippi Delta.  You're
14  going to draw an African-American-ability-to-elect
15  district there most likely without doing anything
16  crazy.
17            Or if you draw a district in Brooklyn,
18  you'll draw an African-American-ability-to-elect
19  district there most likely.
20            So I think it is possible to do it without
21  race, but I guess you do it at your own peril.
22  Q.       So that's not exactly my question; whether
23  you can inadvertently draw a minority opportunity
24  district.  My question is whether you agree that, if
25  you draw a map blind to race, you cannot see where

Case 3:21-cv-00259-DCG-JES-JVB  Document 622-1  Filed 10/24/22  Page 52 of 143
Sean P. Trende
September 02, 2022

Page 202
1  Latinos are sufficiently numerous and compact to
2  comprise the majority of a new district?
3          MR. KERCHER:  Same objection.  Incomplete
4  hypothetical.  Lacks foundation.  It's asked and
5  answered at this point.
6  A.       If you cannot see race, you cannot see race.
7  But that doesn't preclude the possibility that you
8  would fulfill the Voting Rights Act, nevertheless.
9  Q.       But if you cannot see race, you cannot see
10 where the Latino population is present in a new area
11 such that you might have to consider drawing a new
12 Voting Rights Act district.  Would you agree with me?
13         MR. KERCHER:  Same objection.  I would add
14 that it's vague.
15 A.       So it's pretty much the same answer.  It's
16 not something that I was asked to look into in this
17 case.  But as a matter of on-the-spot speculation, if
18 you can't see race, you can't see race; and so you
19 wouldn't be able to see where Hispanic voters live
20 directly.
21         I guess that would -- If you cannot see
22 where Hispanics live, that would include the
23 subsection of that, of -- I can't remember exactly how
24 you worded it.
25 Q.       Okay.  Which parts of Texas would you

Page 203
1  describe yourself as familiar with?
2          MR. KERCHER:  Object to the form.
3  A.       It would depend on the level of familiarity,
4  but most familiar with the Dallas/San Antonio areas.
5  Q.       Have you ever lived in Texas?
6  A.       Yes.
7  Q.       For how long and where?
8  A.       I lived there in San Antonio for three
9  years, and I lived in Dallas for portions of two
10 summers.
11 Q.       How much time have you spent in the
12 Rio Grande Valley?
13 A.       I know we went there when I lived in
14 San Antonio, but not a whole lot.
15 Q.       So just for visits casually?
16 A.       Yes.
17 Q.       Okay.  How much time have you spent in
18 El Paso?
19 A.       I went there for a court hearing.
20 Q.       Less than a day, we'll say?
21 A.       I think that's right.
22 Q.       Just as an aside, that might be increased.
23 Okay.
24         I just have a followup on an exchange that
25 you had with Ms. Anderson about Congressional

Page 204
1  District 23.  I believe in your report you describe
2  Congressional District 23 as being drawn with partisan
3  interests in mind; is that correct?
4  A.       I think that's right.
5  Q.       You mentioned that you hadn't read Abbott
6  versus Perez; is that also right?
7  A.       That's correct.
8  Q.       But are you familiar with the fact that the
9  district court -- And this was not a decision that was
10 ever appealed -- found that there was intentional
11 racial discrimination in the construct of
12 Congressional District 23?
13         MR. KERCHER:  Object to the form.
14 A.       No.  I've never read the Abbott decision --
15 Q.       Have you ever --
16 A.       -- or Perez.
17 Q.       I'm sorry.  I stepped on your answer.
18 A.       That's okay.  I said Abbott and then
19 realized the short form isn't the official name, so I
20 said Perez.
21 Q.       Have you ever heard of "the nudge factor" as
22 a term associated with redistricting?
23         MR. KERCHER:  Object to form.
24 A.       No.
25 Q.       Have you ever heard of the concept in

Page 205
1  redistricting of pushing up the Latino population, but
2  also keeping an eye on the results of the election so
3  that the turnout of Latino voters is too low to elect
4  a preferred candidate?
5          MR. KERCHER:  Object to the form.
6  A.       I have not.
7  Q.       In your tweet, when you were talking about
8  making CD 23 majority Trump, while keeping it at
9  66 percent Hispanic, and making Texas 28 heavily
10 Trump, while keeping it 66 percent Hispanic, were you
11 referring to Hispanic Citizen Voting Age Population or
12 some other number?
13 A.       I don't think redistricting has the CVAP, so
14 it would be VAP.
15 Q.       Have you heard -- Aside from whether or not
16 you read Abbott versus Perez, have you heard anybody
17 say that Texas was found liable for intentional
18 discrimination in CD 23 for keeping certain population
19 numbers in the Latino community above 50 percent, but
20 ensuring or striving to ensure certain political
21 performance for Anglo-preferred candidates?
22         MR. KERCHER:  Objection.  Assumes facts not
23 in evidence.  Lacks foundation.
24 A.       I may well have heard it.  But that is the
25 one -- That is honestly the one case out there that's

U.S. Legal Support | www.uslegalsupport.com  202 to 205

Page 206

1  kind of like Jarndyce and Jarndyce; it goes on for the
2  entire decade.  I'm just not that familiar with it.
3  Q.        Let's talk about the case before it on
4  CD 23.  You mentioned that you thought that case was
5  largely about Congressional District 25 not being an
6  offset to 23.  Do you recall that testimony?
7  A.        Yes.  That's my understanding of LULAC.
8  Q.        Do you remember the court ruling in LULAC
9  that, in response to the growing participation that
10 threatened the CD 23 Henry Bonilla incumbency, the
11 State divided the cohesive Latino community in Webb
12 County, moving about 100,000 Latinos to District 28,
13 which was already a Latino opportunity district, and
14 leaving the rest in a district where they now have
15 little hope of electing their candidate of choice?
16          MR. KERCHER:  Same objections.
17 A.        Yes.
18 Q.        Do you recall the Supreme Court in LULAC
19 v Perry concluding that the changes to CD 23 bear the
20 mark of intentional discrimination that could give
21 rise to an equal protection violation?
22          MR. KERCHER:  Same objection.
23 A.        I don't.
24 Q.        But would it be fair to say, then, that in
25 your report's discussion of CD 23, you did not take

Page 207

1  into account the possibility that Texas may be going
2  for a three-peat here in CD 23?
3          MR. KERCHER:  Object to the form.
4  A.        Because I am doing my analysis here on
5  whether it is consistent with a political outcome,
6  then, no, I wasn't looking at whether it was a similar
7  tact to what you're representing the Court held in
8  LULAC, or what I take you to be representing as the
9  Court's holding in LULAC.
10          MS. PERALES:  Thank you.  I'll pass the
11 witness.
12          MR. BRACHMAN:  Go off the record.  Take a
13 10-minute break.
14          (Recess taken.)
15                    - - -
16              EXAMINATION
17 BY MR. BRACHMAN:
18 Q.        Mr. Trende, welcome back.  My name is
19 Paul Brachman.  I'm a lawyer with the Fair Maps Texas
20 Action Committee.  And like Ms. Perales, I will try
21 not to go over things we've already covered or ask you
22 questions you've already answered.  I'll do my best to
23 be efficient.
24          I believe you testified earlier that you
25 were first approached about your retention in this

Page 208

1  case in May or June, and formally retained in June of
2  this year; is that correct?
3  A.        I believe that's right.
4  Q.        Prior to your retention as an expert in this
5  case, did you discuss the Texas 2021 redistricting
6  process with any past or present members of the Texas
7  Legislature?
8          MR. KERCHER:  Object to the form.
9          You can answer.
10 A.        Not to my knowledge.
11 Q.        Prior to your retention, did you discuss the
12 2021 redistricting process with any past or present
13 members of the Texas Governor's Office?
14          MR. KERCHER:  Object to the form.
15 A.        Not to my knowledge.
16 Q.        Prior to your retention as an expert in this
17 case, did you discuss the Texas 2021 redistricting
18 process with any past or present members of the Texas
19 Office of the Attorney General?
20          MR. KERCHER:  Object to the form.
21 A.        Prior to my retention I would have had
22 preliminary conversations with the attorneys.  But
23 beyond that, no, not to my knowledge.
24 Q.        Okay.  No discussions unrelated to your
25 retention?

Page 209

1  A.        Yes, not to my knowledge.
2  Q.        Okay.  Prior to your retention as an expert
3  in this case, did you discuss the Texas 2021
4  redistricting process with anyone from the law firm of
5  Butler Snow?
6          MR. KERCHER:  Object to the form.
7          You can answer.
8  A.        I have never heard of that law firm, so not
9  to my knowledge.
10 Q.        Okay.  I just want to ask a couple of
11 questions similar to some others you've been asked,
12 but related to my client about the scope of your
13 retention.
14          If you could turn to Exhibit 1, Page 6,
15 please.  I'm focused on the paragraph at the bottom of
16 the page under Scope of Engagement.  I just want to
17 ask you about the second-to-last sentence where you
18 say, "In the course of this, I respond to points made
19 in the expert reports of Dr. Jay Morgan Kousser,
20 Dr. Moon Duchin, Dr. Christina Morales, and
21 Mr. George Korbel."  Do you see that?
22 A.        Yes.
23 Q.        Okay.  You do not say in your expert report
24 that you respond to any points made by
25 Dr. Callingwood; is that correct?

Sean P. Trende
September 02, 2022

Page 210

1   A.        That's correct.
2   Q.        You do not say anywhere in your expert
3   report in this case that you respond to points made by
4   Dr. Spencer; is that correct?
5   A.        Yeah.  I don't even know who these people
6   are.  So yes.
7   Q.        Based on that answer, is it fair to say that
8   you have not reviewed Dr. Callingwood's report?
9   A.        I have not.
10  Q.        Also fair to say you've not reviewed
11  Dr. Spencer's report?
12  A.        I have not.
13  Q.        Okay.  You do not say in your expert report
14  that you respond to points made by Dr. Martinez,
15  correct?
16  A.        That's correct.
17  Q.        Have you reviewed the expert report of
18  Dr. Martinez in this case?
19  A.        I don't believe so.
20  Q.        To your knowledge, have you reviewed any
21  expert reports tendered by or on behalf of the
22  Fair Maps Plaintiffs?
23  A.        If those are all of your experts, then
24  I have not.
25  Q.        I have one more to ask you about.  Have you

Page 211

1   reviewed the expert rebuttal report of Tony Fairfax?
2   A.        Briefly.
3   Q.        Okay.  I don't mean this to be a trick
4   question.  I know it was responding to your report.
5   But just to clarify, for the record, there's nothing
6   in your expert report that responds to Mr. Fairfax's
7   report, correct?
8   A.        There may be points made in it that would be
9   responsive.  But, obviously, it was not written with
10  an ability to see the future and what he would write.
11  So in that sense, no.
12  Q.        So sitting here today, do you intend to
13  offer a report responding to Mr. Fairfax's report?
14            MR. KERCHER:  Object to the form.
15  A.        I don't have any intentions to write
16  additional reports sitting here today.
17  Q.        Okay.  Is there anywhere in your report
18  where you analyze the demonstrative maps proffered by
19  the Fair Maps Plaintiffs in this case?
20            MR. KERCHER:  Object to the form.
21            You can answer.
22  A.        Not to my knowledge.
23  Q.        Sitting here today, are you aware -- Strike
24  that.
25            Sitting here today, have you reviewed any of

Page 212

1   the demonstrative alternative maps proffered by the
2   Fair Maps Plaintiffs?
3   A.        I may have come across them at the Texas
4   redistricting website, but not that I can recall.
5   Q.        Okay.  And fair to say, based on that
6   answer, that your expert report does not contain any
7   specific analysis of any demonstrative maps proffered
8   by the Fair Maps Plaintiffs in this case?
9   A.        Not to my knowledge.
10  Q.        Now, on Page 7 of your report, Exhibit 1,
11  Section 4, you list the data relied upon in
12  construction of datasets.  Do you see that section?
13  A.        Yes.
14  Q.        And are the materials listed in that section
15  a comprehensive and complete description of all of the
16  materials that you relied upon in forming your
17  opinions in this case?
18            MR. KERCHER:  Object to the form.
19            You can answer.
20  A.        I believe so.
21  Q.        Other than materials that are in the public
22  record, you did not consider any draft maps that may
23  have been created as part of the 2021 redistricting
24  process, correct?
25            MR. KERCHER:  Object to the form.

Page 213

1            You can answer, if you understand the
2   question.
3   A.        If the -- That is true, assuming that the
4   Morales and Duchin maps are in the public record.
5   Q.        Okay.  Fair enough.
6   A.        I don't know what other maps would be.
7   Q.        Okay.  You have not considered any draft
8   maps drawn by the map drawers who created the Enacted
9   Plan that are not in the public record, correct?
10            MR. KERCHER:  Object to the form.
11  A.        Not to my knowledge.
12  Q.        Do you have personal knowledge of the data
13  that the map drawers who created the Enacted Plan
14  considered as part of the map-drawing process?
15            MR. KERCHER:  Object to the form.
16  A.        No.
17  Q.        Do you have personal knowledge of what
18  software the map drawers who created the Enacted Plan
19  used in the 2021 redistricting process?
20            MR. KERCHER:  Object to the form.  Asked and
21  answered.
22  A.        Yeah.  I think I mentioned, in one of
23  Mr. Korbel's PowerPoints I think it talks about Red
24  Appel.  A-P-P-E-L.  And so that's how I became aware
25  of that.

Sean P. Trende
September 02, 2022

Page 214
1  Q.      Do you have any personal knowledge of what
2  filters or settings in Red Appel the map drawers used
3  in creating the Enacted Plan?
4          MR. KERCHER:  Object to the form.  Asked and
5  answered.
6  A.      I do not.
7  Q.      As part of your work in this case did you
8  interview any individuals who drew the 2021 Enacted
9  Maps?
10         MR. KERCHER:  Object to the form.  Asked and
11 answered.
12 A.      I wasn't asked to do anything like that, so
13 I did not.
14 Q.      I'll ask you about some terminology in your
15 report.  If you'll turn to Page 9 of Exhibit 1,
16 please.  The last sentence of the first paragraph
17 reads, "Nevertheless, close examination of the
18 historical context behind the districts, of the
19 districts themselves, and of their political and
20 racial composition clearly demonstrates that they are
21 consistent with districts drawn to substantially
22 improve the political advantage of the Republican
23 Party."  Did I read that correctly?
24 A.      Yes.
25 Q.      Okay.  What's your definition of "political

Page 215
1  advantage"?
2  A.      The ability of the Republican Party to win
3  seats in the legislature and United States Congress in
4  the State of Texas.
5  Q.      Do you have a definition of a "safe
6  district"?
7          MR. KERCHER:  Object to the form.
8          You can answer.
9  A.      That's something that people quibble over.
10 But, generally speaking, I'm not sure of any
11 districts -- I'm not sure there are more than one or
12 two districts that are less than say 46 percent Trump
13 that Democrats won -- and I mean Trump 2020 -- that
14 Democrats won in the last Congressional Election.
15         Of course, if I were doing it, I would be
16 looking forward as well.  If you were trying to draw a
17 map with political advantage, you want that to be a
18 durable advantage so that might bump things down a
19 little bit.
20 Q.      Is there any quantitative expected margin in
21 victory that you used to define a safe district for
22 purposes of your report in this case?
23         MR. KERCHER:  Object to the form.
24 A.      I'm not sure I talk much about what a safe
25 district would be.  It's that Donald Trump's vote

Page 216
1  share in many of these districts is improved, which
2  improves the ability of Republicans to win the
3  district.
4  Q.      So there was no specific numerical
5  improvement that you considered as qualifying as
6  improving the political advantage of the Republican
7  Party?  As long as it improved it by 1 percent, that
8  was sufficient?
9          MR. KERCHER:  Object to the form.
10 A.      I don't know about that.  But when you look
11 at -- What the sentence means is, when you look at the
12 changes, it's clear that these districts, many of
13 which improved Donald Trump's vote share by
14 substantially more than a point, taken as a whole,
15 they improved the political advantage of the
16 Republican Party in the State of Texas.
17 Q.      Focusing specifically on the language from
18 the report that I just read, is there a numerical --
19 I'll withdraw that and I'll ask a better question.
20         Is there a number that you had in mind that
21 correlates with substantially improve the political
22 advantage of the Republican Party?
23         MR. KERCHER:  Object to the form.
24 A.      You know, this game gets played any time an
25 adjective or an adverb gets inserted in a report.  I

Page 217
1  don't know exactly where the threshold is for
2  substantial improvement.  But when you're taking
3  districts that Joe Biden won and turning them into
4  districts that Donald Trump won by 20, I think under
5  any general use of the word, that's a substantial
6  improvement in the political advantage of the
7  Republican Party.
8  Q.      Okay.  Is there any specific number of
9  districts, for purposes of your report in this case,
10 that needed to flip from districts that Biden won to
11 heavy Trump-favorite districts in order to
12 substantially improve the political advantage of the
13 Republican Party?
14         MR. KERCHER:  Same objection.
15 A.      It's the same basis answer.  We can quibble
16 about where that threshold is.  I don't know where
17 stubble turns into a beard, but my co-counsel clearly
18 has a beard; and it's sort of the same thing here.
19         If it were one district in the entire state
20 that it improved by 1 point, I probably wouldn't use
21 the word "substantially."  But I don't think there's
22 any reasonable doubt that the Republican Party's
23 political advantage has been substantially improved as
24 a result of these maps.
25 Q.      That's fair enough.  But as between the

Sean P. Trende
September 02, 2022

Page 218

1   scenario where there's just one district that improves
2   by 1 percent, and the scenario that you observed under
3   the Enacted Plans, you did not pick a specific number
4   of districts in which the Republican advantage needed
5   to increase to qualify as substantial improvement,
6   correct?
7           MR. KERCHER:  Object to the form.  Asked and
8   answered.
9   A.      That's right.  As I said, sometimes it's
10  clear that it's a beard, not stubble.  And that's what
11  we have here.
12  Q.      If you'd turn to Page 209 in your report,
13  please.  And under Conclusion, the first sentence
14  reads, "The Enacted Plans are drawn in such a way that
15  they shore up Republican performance in districts that
16  had wavered by the end of the decade."  Did I read
17  that correctly?
18  A.      Yes.
19  Q.      Okay.  Does "shore up," as it is used in
20  that sentence, have the same meaning as "substantially
21  improve" in the language that we looked at on the
22  prior page?
23  A.      I think it's consistent with "substantial
24  improvement."  But "shoring up" means improving or
25  making stronger.

Page 219

1   Q.      Is it fair to say, based on my last few
2   questions and your last few answers, that there's no
3   specific numerical increase in the expected Republican
4   advantage that you selected before you decided that a
5   district had been shored up?
6           MR. KERCHER:  Object to the form.
7   A.      If Republican performance improves, then it
8   would be shored up.
9   Q.      By any amount, correct?
10  A.      It would have to be net, but yes.
11  Q.      Okay.
12  A.      Or, actually, no.  The way this sentence is
13  phrased, it would have to be at least 1 or at least 2.
14  Q.      Okay.  So at least 2 percentage points?
15  A.      No, at least two districts --
16  Q.      Two districts.  Got it.
17  A.      -- that showed any improvement.  You could
18  write that sentence.  Though, of course, in this
19  situation, it's much more than that.
20  Q.      Is there a specific -- Withdraw that.
21          What does the word "district" -- or rather,
22  what does the phrase "districts that wavered" mean in
23  that sentence?
24  A.      Districts where Republican incumbents had
25  come close to losing or had lost.

Page 220

1   Q.      Okay.  And when you say, "had come close to
2   losing," is there a specific margin that you
3   considered sufficiently close to losing to consider a
4   district wavering?
5           MR. KERCHER:  Object to form.
6   A.      No.
7   Q.      Okay.  Mr. Trende, are you offering the
8   opinion in this case that it was the actual intent of
9   the Texas Legislature to substantially improve the
10  Republican political advantage?
11          MR. KERCHER:  Object to the form.
12          You can answer.
13  A.      No.
14  Q.      Likewise, are you offering the opinion in
15  this case that it was the actual intent of the
16  legislature to shore up wavering Republican districts?
17          MR. KERCHER:  Same objection.
18  A.      No.
19  Q.      Are you offering the opinion in this case
20  that it was the legislature's primary or predominant
21  purpose to improve Republican political advantage?
22          MR. KERCHER:  Object to the form.
23  A.      No.
24  Q.      Is it fair to say that your opinions in this
25  case are based, in part, on a visual inspection of

Page 221

1   figures showing how the lines of the Enacted Plan
2   divide precincts won by Biden from precincts won by
3   Trump in the 2020 Presidential Election?
4           MR. KERCHER:  Object to the form.
5   A.      Yes.
6   Q.      So, for example, if we go to Page 34 and
7   take a look at figure 2, the only election results
8   that are reflected in figure 2 are the 2020
9   Presidential Election results, correct?
10  A.      Correct.
11  Q.      So the coloring there, the red, blue,
12  purple, that does not reflect vote share in any
13  Congressional Election, correct?
14  A.      Correct.
15  Q.      I think you'll agree with me, based on your
16  prior testimony, but would you agree with me that
17  former President Trump is a controversial political
18  figure?
19          MR. KERCHER:  Object to the form.
20  A.      Yes.
21  Q.      And even amongst Republican voters, former
22  President Trump is a controversial figure, correct?
23          MR. KERCHER:  Same objection.
24  A.      Yes.  Well, some Republican voters.
25  Q.      There are voters who are registered

Sean P. Trende
September 02, 2022

Page 222
1  Republicans who are opposed to Mr. Trump and have been
2  throughout his political career, correct?
3          MR. KERCHER:  Object to the form.
4  A.      Yes.  I live next to some of them.
5  Q.      Okay.  You've heard, for example, of "Never
6  Trumpers"?
7          MR. KERCHER:  Same objection.
8  A.      Yes.
9  Q.      And what's your understanding of a Never
10 Trumper?
11         MR. KERCHER:  Same objection.
12 A.      They are Republicans who would never vote
13 for President Trump.
14 Q.      Okay.  So is it fair to say, then, that
15 Mr. Trump's performance is not necessarily predictive
16 of the performance of any other particular Republican
17 candidate for office?
18         MR. KERCHER:  Object to the form.
19 A.      Actually, President Trump's performance is
20 generally pretty predictive of who won.  So, in 2016,
21 I don't think there were any senate states that Trump
22 failed to carry, or that Trump carried that a
23 Republican did not, and vice versa.  That was the
24 first time that happened in history, or at least
25 recent history.

Page 223
1          In 2020, I think the only crossover state
2  was Maine where Susan Collins is a political athlete
3  who kind of does her own thing.  Most of the Biden
4  districts were won by Democrats.  Most of even the
5  swing Trump districts were won by Republicans, so
6  I don't think I can say -- I don't think I can agree
7  with you.
8  Q.      Okay.  Let me ask a more precise question.
9  Is it fair to say that Mr. Trump's level of support in
10 any given precinct is not necessarily predictive of
11 the level of support for other Republican candidates?
12         MR. KERCHER:  Object to the form.
13 A.      There may be precincts that vote for Joe
14 Biden, but voted for other Republicans and vice versa,
15 but it's probably the strongest predictor we have.
16 Q.      If you would turn to Page 140 of your
17 report, please.  Maybe I'll try it with an example.
18 In this page of your report here you're discussing the
19 state's senate districts in Dallas/Fort Worth area,
20 correct?
21 A.      Correct.
22 Q.      And in the second paragraph on this page,
23 you note that, in the 2018 and 2020 elections,
24 Republicans lost two senate seats in the area; the
25 10th in Tarrant County and 16th in Dallas County,

Page 224
1  correct?
2  A.      Yes.
3  Q.      And then you go on to note that Republicans
4  also had a close call in the 8th where the Republican
5  won 51.18 percent of the vote, and the 9th where the
6  senator won with 54.3 percent of the vote, correct?
7          MR. KERCHER:  Object to the form.
8  A.      54.03.
9  Q.      Thank you.  Yeah.  With that correction, is
10 that correct?
11 A.      Yes.
12 Q.      Okay.  And then you note that, in 2020,
13 Trump won just 47.7 percent of the vote in the 8th,
14 and 50.1 percent in the 9th, correct?
15 A.      Correct.
16 Q.      Okay.  So the support for Trump in the
17 8th and 9th state senate districts was lower than the
18 support for Republican senate candidates, correct?
19 A.      Yes.
20 Q.      Is it fair to say that's a phenomenon that
21 could be present in other districts throughout the
22 state?
23         MR. KERCHER:  Object to the form.
24 A.      I haven't looked, but it could be present.
25 I'd also note that the two districts that they did

Page 225
1  lose had even lower Trump vote shares.  So just
2  because something is predictive doesn't mean the
3  cutoff is necessarily exactly at 50 percent.
4  Q.      Okay.
5  A.      In fact, it's almost, I mean, it's almost a
6  1 to 1.  The senator won 54 percent in the 9th and
7  51 percent in the 8th, and Trump -- so that's a
8  3-point difference?
9          Trump won 50.1 percent in the 9th and
10 47.7 percent in the 8th, so 2.4 percent difference.
11 So in regression terms, there would be an intercept,
12 but it would have a pretty tight fit.
13 Q.      There is nevertheless a difference in the
14 level of support, correct?
15 A.      Well, in the level.  But you had asked me if
16 it's predictive.  And it doesn't have to be a
17 one-to-one correspondence for something to be
18 predictive.  It just has to be consistent.
19 Q.      In your report, when you evaluate the extent
20 to which any particular district is shored up, using
21 your terminology, that analysis is based on
22 Mr. Trump's vote share in the 2020 election, correct?
23         MR. KERCHER:  Object to the form.
24 A.      Yes.  Republicans tend to do better in
25 districts where Mr. Trump does better.

Sean P. Trende
September 02, 2022

Page 226

1 Q.      Okay.  Your analysis of whether a district
2 is shored up is not based on the vote share of the
3 Republican candidate who is actually running in, for
4 example, that Congressional District, correct?
5 A.      Well, you can't really do that because the
6 candidate running in the Congressional District, as
7 you add precincts to it, you're adding precincts where
8 that congressional candidate wasn't running.
9 Q.      Okay.
10 A.      You're asking for an impossible analysis.
11 Q.      How about, your analysis of whether a
12 district is shored up is not based on the
13 Republican -- the performance of Republican candidate
14 in any other state-wide office, other than Mr. Trump's
15 performance, correct?
16 A.      That's right.  And if there is a state-wide
17 Republican that has better predictive strength, and if
18 using it would give a different answer, I would be
19 interested to see that analysis.
20 Q.      Okay.  That's not an analysis that you've
21 done in your report, correct?
22      MR. KERCHER:  Object to the form.
23 A.      As far as I know, no one has.  Including
24 myself.
25 Q.      Okay.  And you don't know whether the map

Page 227

1 drawer who created the Enacted Plan considered only
2 Mr. Trump's vote share as you do in your report,
3 correct?
4      MR. KERCHER:  Object to the form.
5 A.      I don't.
6 Q.      Okay.  You can't rule out the possibility
7 that the map drawers who created the Enacted Plan
8 considered other state-wide races, correct?
9      MR. KERCHER:  Object to the form.  Asked and
10 answered several times.
11 A.      I don't know what the map drawers were
12 doing.  All I know is it's consistent with improving
13 Republican performance in the district because
14 Mr. Trump's vote share correlates strongly with
15 Republican performance.
16 Q.      Mr. Trende, do you know whether incumbent
17 legislators were involved in the process of drawing
18 maps that became part of the Enacted Plan?
19      MR. KERCHER:  Object to the form.
20 A.      I do not.
21 Q.      I'll ask you a hypothetical question.
22 Assume that incumbent legislators were involved in the
23 process, would you agree with me that incumbent
24 legislators have an interest in retaining their seats?
25      MR. KERCHER:  Object to the form.

Page 228

1 Incomplete hypothetical.  Lacks foundation.
2 A.      I believe that, generally speaking,
3 candidates for reelection want to win that reelection,
4 so yes.
5 Q.      And you don't know whether incumbent
6 legislators considered historical election results
7 from any particular county or districts as part of the
8 creation of the 2021 Enacted Plan, do you?
9      MR. KERCHER:  Objection.  Asked and
10 answered.  You've asked him several questions, as have
11 previous counsel, about what he knows about what
12 legislators considered during the redistricting
13 processes.  He has testified repeatedly he doesn't
14 know.  Please move on.
15      Mr. Trende, you may answer this question.
16 A.      I still don't know anything about what the
17 legislators were looking at.
18 Q.      Okay.  I'll ask you some questions about
19 some specific districts that you analyzed in your
20 report.
21      Before I do that, I'll ask you another
22 hypothetical.  Assume that minority voters in the
23 state of Texas reliably support Democratic candidates.
24 Do you have that assumption in mind?
25 A.      I heard you.

Page 229

1 Q.      Okay.  With that assumption in mind, is one
2 way to improve the prospects of Republican candidates
3 to dilute the voting strength of minority voters?
4      MR. KERCHER:  Object to the form of the
5 question.  It's an incomplete hypothetical.  Lacks
6 foundation.
7 A.      It would depend on the circumstances of the
8 political -- of the specific districts.  But if you
9 reduced -- under your assumption, if you reduced the
10 minority share of a district and did not replace it
11 with white voters who voted even more heavily
12 Democratic than the minority groups, then it would
13 improve Republican performance.
14 Q.      Okay.  Turn to Page 11 of your report,
15 please.  Figure 2 on Page 11 shows the benchmark
16 verses the Enacted Plan for Texas Congressional
17 District 3, correct?
18 A.      Correct.
19 Q.      The green line represents the Enacted Map
20 and the black line prepares the benchmark map; is that
21 right?
22 A.      Correct.
23 Q.      Okay.  Now, just turning over to the next
24 page, on Page 12, would you say that Congressional
25 District 3, I'm looking at the first line of the

Sean P. Trende
September 02, 2022

Page 230

1  second paragraph, says, "The district gives up 371,209
2  former residents," correct?
3  A.      Correct.
4  Q.      That means the map drawers chose to move
5  those former residents somewhere else, right?
6          MR. KERCHER:  Object to the form.
7  A.      Yes.  Assuming they made the choice.  No
8  need to get into a word game or word battle there.
9  Q.      Sure.  Have you analyzed what the
10 demographic breakdown of those 371,209 voters is?
11 A.      No.
12 Q.      Now, in exchange for those 371,209, there
13 were new voters who were added to CD 3, correct?
14 A.      Correct.
15 Q.      And you did not analyze the demographics of
16 those voters who were added to CD 3, correct?
17 A.      Correct.
18 Q.      Okay.  And the net effect of the change to
19 CD 3 was that it goes from a 49.5 percent Biden to a
20 42.7 percent, correct?
21 A.      Correct.
22 Q.      And that qualifies as shoring up the
23 district, correct?
24 A.      Clearly.
25 Q.      Okay.  For purposes of your report, would

Page 231

1  you consider CD 3 shored up if the expect -- or if the
2  Biden vote share had been reduced to, say,
3  47.5 percent?
4          MR. KERCHER:  Objection.  Calls for
5  speculation.
6  A.      I would still say you shored up Republican
7  strength.  You didn't do -- you didn't do it as
8  strongly or substantially as if you took it down to
9  42.7.  But yeah.
10 Q.      Okay.  And the same -- would the same be
11 true if the Biden vote share was reduced to
12 48.5 percent?
13         MR. KERCHER:  Same objection.
14 A.      You would be shoring up Republican
15 performance in the district.
16 Q.      Okay.  Turning back to Page 11 and looking
17 at figure 2.  Do you know whether the green lines
18 representing the Enacted Plan cut through or divide
19 any minority communities?
20 A.      I do not.
21 Q.      You didn't evaluate that for purposes of
22 your report, correct?
23 A.      That's right.  I wasn't asked to look at the
24 minority outcomes.
25         MR. BRACHMAN:  Okay.  I'll ask the court

Page 232

1  reporter to mark this as Exhibit 11.
2                  - - -
3          And, thereupon, Plaintiff's Exhibit No. 11
4  was marked for purposes of identification.
5                  - - -
6  BY MR. BRACHMAN:
7  Q.      Mr. Trende, what I've handed you is a
8  compilation of maps that were included in the expert
9  rebuttal report of Tony Fairfax.  I'll just first ask
10 you, have you seen these before?
11 A.      I looked through his report, so I would have
12 laid eyes on them.
13 Q.      Okay.  If you would -- There are page
14 numbers down at the bottom sort of centered.  If you
15 would turn to 136, please.  Up at the top of this map,
16 do you see, it says, Texas Congressional Districts
17 2021 Enacted Plan column?
18 A.      Yes.
19 Q.      And in the bottom-right corner, do you see
20 the legend indicates that the green shading is showing
21 AAPI voter CVAP percentage?
22 A.      Yes.
23 Q.      Okay.  Looking at this map, would you agree
24 with me that the western boundary of Congressional
25 District 3 zigzags and divides AAPI communities?

Page 233

1          MR. KERCHER:  Object to the form.
2  A.      Well, it certainly zigzags.  If you want to
3  represent that all these of the shaded areas form an
4  AAPI community, then it would divide those
5  communities.  I don't know that that's the case.
6  I don't know if I put those in tandem in such a way
7  that it sort of suggests that it zigzags in order to
8  divide those communities.
9  Q.      Fair enough.  You would at least agree with
10 me that the western border of Congressional District 3
11 has precincts with percentages greater than 25 percent
12 AAPI voters on the east side and some on the west side
13 of the district -- of the line, correct?
14         MR. KERCHER:  Object to the form.
15 A.      Yeah.  I don't know if it would be better or
16 worse if it segregated them or if it divided them like
17 this; but it does seem to divide them.
18 Q.      Okay.  And you are not offering the opinion
19 that this exact border -- western border of CD 3 was
20 necessary to shore up that district, are you?
21         MR. KERCHER:  Object to the form.
22 A.      There may be other ways to draw it.  I mean,
23 there's almost always hundreds of ways to draw
24 district boundaries.  My only opinion is the way they
25 drew it is consistent with trying to shore up

Sean P. Trende
September 02, 2022

Page 234

1  Republican vote strength.
2  Q.      You haven't analyzed whether it would be
3  possible to produce a roughly 7-point improvement in
4  the Trump 2020 vote share for CD 3 without separating
5  AAPI voters as the western boundary of CD 3 does,
6  right?
7  A.      I haven't looked at that.  No.
8  Q.      Okay.  I'm going to go back to your report,
9  Exhibit 1.  Take a look at Page 19, please.  Figure 8
10 shows Congressional District 6 Benchmark versus
11 Enacted Plan, correct?
12 A.      Correct.
13 Q.      And in your description of CD 6, as you did
14 with CD 3, you note the number of voters who were
15 moved out of the district and the number of voters who
16 were moved in, correct?
17 A.      Correct.
18 Q.      And as with CD 3, you have not analyzed and
19 you're not offering any opinion on the demographics of
20 those voters, correct?
21         MR. KERCHER:  Objection.  Form.
22 A.      I didn't look at the racial demographics of
23 those voters.  No.
24 Q.      And as with CD 3, you don't know whether the
25 green lines for the Enacted Plan for CD 6 cut through

Page 235

1  and/or divide any communities of color, correct?
2         MR. KERCHER:  Same objection.
3  A.      Correct.
4  Q.      Now, turning over to Page 20, you observed
5  that the changes to CD 6 transformed it from a
6  district Trump won by just 3 points to one where he
7  received 62 percent of the two-party vote, correct?
8  A.      Correct.
9  Q.      And that's a 59 percent improvement, right?
10 A.      A what?
11 Q.      A 59 percent improvement?  Oh, no.
12 I'm sorry.  I'm getting my math wrong.
13         Let me ask the question this way.  Is there
14 some lesser amount of improvement that would have
15 qualified as shoring up the district?
16         MR. KERCHER:  Object to the form.
17 A.      I mean, any improvement would be shoring it
18 up.  It might not make it -- it might not shore it up
19 enough to make the legislature or incumbent
20 comfortable in the district, but it would be shoring
21 it up.
22 Q.      Okay.  Take a look back at Exhibit 11, if
23 you would, the collection of maps.  Please look at
24 Page 134.  Do you see this is labeled as Texas
25 Congressional District's 2021 Enacted Plan,

Page 236

1  Dallas/Fort Worth?
2  A.      Yes.
3  Q.      And in the bottom left, I'll call it,
4  there's a legend that indicates that the purple
5  shading on this map represents Latino CVAP percentage.
6  Do you see that?
7  A.      Yes.
8  Q.      Okay.
9  A.      I'm colorblind, so I'll accept your
10 representation that it's purple.  I can make out
11 gradations.
12 Q.      Okay.
13 A.      It looks blue to me.
14 Q.      Okay.  And do you see right next to the
15 legend the indicator for Congressional District 6?
16 A.      Yes.  Down to the bottom right of the
17 legend, yeah.
18 Q.      And you can see the black boundary lines for
19 CD 6?
20 A.      Yeah.
21 Q.      Okay.  And is it fair to say that those
22 lines appear to divide Latino voters in CD 6 from
23 Latino voters in, for example, CD 33?
24         MR. KERCHER:  Object to the form.
25 A.      There are certainly Latino or Hispanic

Page 237

1  voters in CD 33 and in CD 6.  It looks to me like the
2  precincts that are placed into District 6 tend to be
3  less heavily Latino than the ones in 33.
4  Q.      Okay.  And fair to say that the district
5  lines for CD 33, CD 30, CD 32 also divide Latino
6  voters?
7         MR. KERCHER:  Object to the form.  Calls for
8  speculation.  Misstates the previous testimony.
9         You may answer.
10 A.      Looks like there are Hispanic and Latino
11 precincts on either side of the lines for 32, 30, and
12 33.
13 Q.      Okay.  Let's go back to Exhibit 1, please,
14 on Page 28.  At the bottom of Page 28, you observed
15 that CD 30 overall is a district that goes from one
16 where Trump won 19.1 percent of the vote to one where
17 he won 21.3 percent of the vote, correct?
18 A.      Yes.
19 Q.      And that increase constitutes shoring up for
20 purposes of your report, correct?
21 A.      It would be a shoring up of Republican
22 voting strength in that district, although it would be
23 fairly useless.
24 Q.      Okay.  And if you look at the following
25 page, Page 30, where you analyze District 32, and

Sean P. Trende
September 02, 2022

Page 238
1  I'll ask you the same question I've asked previously.
2  You discussed the number of voters who were moved in
3  and out of the district, correct?
4  A.        Correct.
5  Q.        You did not analyze the demographics of
6  those voters, the racial demographics of those voters,
7  correct?
8  A.        Correct.
9  Q.        It's fair to say that any time in your
10 report where you represent the number of voters or
11 number of residents who were moved in or out of the
12 district that you did not analyze the racial
13 demographics of those voters?
14           MR. KERCHER:  Object to the form.
15 A.        Yeah.  I wasn't asked to look at the --
16 I was asked to look at whether this was consistent
17 with political changes, and so the examination of the
18 voters that move in and out was focused on politics.
19 Q.        And is it fair to say that in any figure in
20 your report that analyzes the percentage Biden/Trump
21 vote share, that also includes a representation of the
22 Enacted Map lines, that you did not consider whether
23 the Enacted Map lines divided communities of color?
24           MR. KERCHER:  Object to the form.
25 A.        As I sit here, I can't think of any contrary

Page 239
1  examples.
2  Q.        Okay.  So now looking back at Exhibit 11,
3  Page 134, you're not offering the opinion that the
4  exact district lines reflected on that map were
5  necessary to shore up these districts, are you?
6           MR. KERCHER:  Object to the form.
7           You may answer.
8  A.        There may be other lines that would
9  accomplish the same task and any other task that the
10 legislature wanted to achieve, but I don't know.
11 Q.        It's possible that these districts could
12 have been shored up using district lines that kept
13 greater concentrations of Latino voters by CVAP
14 together in the same district, correct?
15           MR. KERCHER:  Objection.  Calls for
16 speculation.
17 A.        I don't know if it's possible or not.  And
18 I would be more interested in whether they get shored
19 up to the same extent and achieve other legitimate
20 goals of the legislature to the same extent.
21 Q.        Okay.  But under your definition, as we
22 talked about earlier, the 1 percentage point
23 improvement constitutes shoring up, correct?
24 A.        Oh, it does, yes.
25 Q.        Okay.  But you have not analyzed whether it

Page 240
1  was possible to, let's say, shore up these districts
2  at a 1 percent improvement level while also keeping
3  more Latino voters together in the same district,
4  correct?
5           MR. KERCHER:  Objection.  Asked and answered
6  Objection, compound.  Vague.  Calls for speculation.
7  A.        There may well be ways to improve Republican
8  performance marginally in these districts, if that's
9  what the goal of the legislature was.  But you may be
10 able to do it without any divisions, yes.  I shouldn't
11 say yes, you can.  I assume you can.  I don't know.
12 Q.        Okay.  And you're not offering an opinion
13 one way or the other on that question, correct?
14           MR. KERCHER:  Same objections.  And I'll add
15 asked and answered.
16 A.        No.  My only opinion here is that the maps
17 that were drawn are consistent with a map drawn to
18 improve Republican performance and shore it up.
19 Q.        Staying with Exhibit 11, take a look at --
20 flip back to Page 131, please.  Do you see this map is
21 labeled Texas Congressional District 2021 Enacted
22 Plan, Harris/Fort Bend County?
23 A.        That's correct.
24 Q.        In the lower left there is a legend again
25 that indicates the color of shading reflects AAPI

Page 241
1  voter CVAP percentage.  Do you see that?
2  A.        Yes.
3  Q.        Okay.  And would you agree with me that the
4  lines for Districts 7, 22, and 9 reflected on this map
5  divide areas with or divide AAPI voters in the
6  Fort Bend area?
7           MR. KERCHER:  Object to the form of the
8  question.
9  A.        There are certainly VTDs with AAPI
10 populations in excess of 25.01 percent on both sides
11 of the lines.
12 Q.        Okay.  And to the extent that these district
13 lines shored up Republican advantage in your opinion,
14 you're not offering the opinion that these specific
15 lines were necessary to achieve that result, correct?
16           MR. KERCHER:  Object to the form of the
17 question.  Calls for speculation.  Asked and answered.
18 A.        I'm not offering an opinion about whether
19 there would be alternate lines out there somewhere
20 that would achieve similar -- that would produce
21 similar outcomes.
22 Q.        Okay.  So you can't rule out the possibility
23 that it would -- that it is possible to shore up these
24 districts without dividing AAPI voters in the manner
25 that's reflected in this map, correct?

Sean P. Trende
September 02, 2022

Page 242

1    MR. KERCHER:  Object to the form.
2  Speculative.  Asked and answered.
3  A.      I can't rule out the possibility that there
4  might be another approach out there that would achieve
5  the same shoring up that the legislature did without
6  splitting the precincts, the VTDs, in the way they are
7  here.
8  Q.      Sticking with this exhibit, if you'll turn,
9  please, to Page 152.  I'm sorry.  Exhibit 11.  Do you
10  see that this map is labeled Texas Senate Districts
11  2021 Enacted Plan, Tarrant County?
12  A.      Yes.
13  Q.      In the lower right-hand corner, do you see a
14  legend that indicates that the color shading on this
15  map reflects Latino CVAP percentage?
16  A.      Yes.
17  Q.      Would you agree with me, looking at the
18  lines for Senate Districts 9, 10, and 22, that they
19  divide the Latino CVAP in Tarrant County?
20  A.      I'll agree that there are VTDs with Latino
21  CVAP in excess of 25.01 percent on both sides of the
22  lines that you mentioned.
23  Q.      And to the extent that these district lines
24  result in shoring up of Republican political
25  advantage, you are not offering the opinion that it

Page 243

1  was impossible to achieve that result -- Strike that.
2    You are not offering the opinion that these
3  specific district boundaries were necessary to achieve
4  any shoring up of Republican partisan advantage in
5  these districts, correct?
6    MR. KERCHER:  Object to the form of the
7  question.
8    You may answer.
9  A.      Yeah.  I don't know if other lines would
10  achieve the legislature's goals.
11  Q.      And you can't rule out the possibility that
12  the legislature could have shored up Republican
13  political advantage in Tarrant County with districts
14  that would have kept more of the Latino CVAP together
15  in a single district, correct?
16    MR. KERCHER:  Same objections.
17  A.      Yeah.  I don't know if there's a way to do
18  that that would achieve the legislature's goals and
19  that wouldn't run you -- as with all these maps, it
20  wouldn't run you into some other sort of packing
21  claims, so I don't know.
22  Q.      Okay.  And you're not offering an opinion on
23  that, correct?
24    MR. KERCHER:  Same objections.  Asked and
25  answered.

Page 244

1  A.      That's correct.
2  Q.      Okay.  Staying on Exhibit 11, if you'll turn
3  with me to Page 149, please.  Do you see that this map
4  is labeled Texas Senate District's 2021 Enacted Plan,
5  Fort Bend?
6  A.      Yes.
7  Q.      And in the lower right-hand corner, do you
8  see there is a legend that indicates the colored
9  shading reflects AAPI CVAP percentages?
10  A.      Yes.
11  Q.      Would you agree with me that the boundaries
12  of the Enacted Plan between Senate Districts 13 and 17
13  divide AAPI voters in the Fort Bend area?
14    MR. KERCHER:  Object to the form of the
15  question.
16  A.      I would agree that there are precincts in
17  the Fort Bend area with an AAPI CVAP in excess of
18  .25 on both sides of the lines.
19  Q.      And you're not offering the opinion that
20  these specific boundaries were necessary to shore up
21  any Republican partisan advantage in the Fort Bend
22  area, correct?
23    MR. KERCHER:  Object to the form of the
24  question.  You can answer.
25  A.      I haven't considered whether alternative

Page 245

1  lines would achieve the legislature's goals in a way
2  that wouldn't also run you into a Shaw claim or a
3  packing claim.
4  Q.      And you have not considered whether it would
5  be possible to shore up Republican partisan advantage
6  in Fort Bend senate districts while keeping more of
7  the AAPI voters together in a single district,
8  correct?
9    MR. KERCHER:  Object to the form.
10  A.      I haven't looked to see if alternative lines
11  would keep those groups -- exist that would keep those
12  groups more together that would achieve the
13  legislature's goals while avoiding some other types of
14  lawsuit.
15  Q.      Okay.  Staying on this exhibit, turn to
16  Page 140, please.  Do you see that this map is labeled
17  Texas House Districts 2001 Enacted Plan, Fort Bend?
18  A.      Yes.
19  Q.      And in the lower right-hand corner, do you
20  see there is a legend that indicates the colored
21  shading reflects Latino CVAP in the Fort Bend area?
22  A.      Yes.
23  Q.      Okay.  Looking at this map, would you agree
24  with me that the boundaries of House District 26, the
25  western boundary divides Latino CVAP, Latino voters --

Sean P. Trende
September 02, 2022

Page 246

1  Well, let me put it this way.  Are there areas with
2  greater than 25.1 percent Latino CVAP on both the east
3  and west side of the western boundary at District 26?
4          MR. KERCHER:  Objection to the form of the
5  question.
6  A.       It does appear that way, yes.
7  Q.       Okay.  And does it appear that the western
8  boundary of House District 26, in fact, divides an
9  area right around where it says Fort Bend that has
10 greater than 50 percent Latino CVAP?
11         MR. KERCHER:  Same objections.
12 A.       I can't tell because I can't see the
13 gradations between 40 to 50 and greater than 50.1 in
14 this column.
15 Q.       Fair enough.  So would you agree with me
16 that it divides areas that are at least 40.1 percent
17 CVAP?
18         MR. KERCHER:  Same objection.
19 A.       It does appear that way.
20 Q.       Okay.  And you are not offering the opinion
21 in your report that this specific western boundary of
22 House District 26 was necessary to shore up Republican
23 partisan advantage under the 2001 Enacted Plan,
24 correct?
25         MR. KERCHER:  Object to the form of the

Page 247

1  question.
2  A.       No.  My only opinion is that it's consistent
3  with improving Republican performance.
4  Q.       And you don't know if it would have been
5  possible to improve Republican performance while
6  keeping more of the greater than 40.01 percent Latino
7  CVAP population together in a single district,
8  correct?
9          MR. KERCHER:  Objection to the form the
10 question.
11         You may answer, Mr. Trende.
12 A.       I don't know if there's a way to do that in
13 a way that it used the legislature's goals as well as
14 avoiding some other type of litigation claim.
15 Q.       Okay.
16 A.       I would imagine if the district lines
17 perfectly followed the boundary between white and
18 Hispanic precincts, you would have a field day with
19 that.
20 Q.       Staying on Exhibit 11, turn with me, please,
21 to Page 144.  Do you see that this map is labeled
22 Texas House Districts 2021 Enacted Plan, Bell County?
23 A.       Yes.
24 Q.       Do you see in the lower left-hand side of
25 the map a legend that indicates the colored shading

Page 248

1  reflects Black CVAP percentage?
2  A.       Yes.
3  Q.       And would you agree with me that the western
4  boundaries of House District 55 divides areas with
5  greater than 25.01 percent Black CVAP?
6  A.       Yes.  I'd agree that there are precincts
7  with -- or VTDs with greater than 25.01 percent Black
8  CVAP on both sides of that line.
9  Q.       Okay.  And if you'll flip back one page to
10 Page 143, do you see this as the same map we've been
11 looking at but with place names?
12 A.       Yes.
13 Q.       And would you agree with me that the western
14 district of House District 55 divides Killeen?
15         MR. KERCHER:  Object to the form of the
16 question.
17 A.       Yes.
18 Q.       Okay.  You can put that aside.
19         I believe you testified earlier today, and I
20 don't want to reask you unnecessarily, that you have
21 not considered any of the evidence that's been
22 produced in the fact discovery side of the case?
23 A.       I believe that's correct.
24 Q.       And that would include things like public
25 comments submitted to the redistricting committees,

Page 249

1  correct?
2          MR. KERCHER:  Object to the form of the
3  question.
4  A.       Correct.  I did not consider that.
5  Q.       And it would also consider things like what
6  legislators said to each other when they were debating
7  various redistricting plans, correct?
8          MR. KERCHER:  Same objection.
9  A.       Correct.
10 Q.       So is it fair to say that you do not know
11 the extent to which legislators were on notice that
12 proposed plans divided communities of color?
13         MR. KERCHER:  Objection.  Asked and
14 answered.
15 A.       That's correct.  I don't know anything about
16 what the legislature was told.  And my only opinion is
17 that the maps that were produced are consistent with
18 improving Republican performance.
19 Q.       And that means just the final maps as part
20 of the Enacted Plan, correct?
21         MR. KERCHER:  Object to the form.
22 A.       That's correct.
23 Q.       Did you consider whether maps in any
24 particular area were amended as part of the
25 redistricting process?

Sean P. Trende
September 02, 2022

Page 250

1          MR. KERCHER:  Object to the form.
2    A.     I did not.  I only looked at the final maps.
3    Nothing has changed in the last 10 seconds.
4          MR. BRACHMAN:  Okay.  Mark this as Exhibit
5    12, please.
6                         - - -
7          And, thereupon, Plaintiff's Exhibit No. 12
8    was marked for purposes of identification.
9                         - - -
10   BY MR. BRACHMAN:
11   Q.     Mr. Trende, I won't ask you if you
12   considered this, but does this appear to you to be a
13   redistricting plan for Bell County?
14   A.     Bell and Lampases.  But yeah.
15   Q.     And in this plan, District 54 includes part
16   of Lampases County and part of Bell County, correct?
17   A.     I think it includes all of Lampases and part
18   of Bell.
19   Q.     Fair enough.  And the part of Bell County
20   that's included in this plan, the eastern boundary of
21   District 54 runs along the top of I-14 and just past
22   the I-35 and then comes down to the south, adjacent
23   to -- Looks like that might be State Highway 109.  Do
24   you see that?
25   A.     I don't have my readers, so that's a little

Page 251

1    more detail than I can make out.
2    Q.     Okay.  If you'll look back at Exhibit 11
3    that we were just looking at, that's the color-shaded
4    map.  You would agree with me that this is a different
5    configuration of the House Districts 55 and 54.
6    What's reflected in Exhibit 12 is a different
7    configuration of House Districts 55 and 54 and what is
8    depicted under the Enacted Plan Map, correct?
9          MR. KERCHER:  Object to the form of the
10   question.
11         You may answer.
12   A.     Page 144 of Exhibit 11 is different than
13   Exhibit 12, which is the benchmark plan.
14   Q.     I'm just asking if they are different?
15         MR. KERCHER:  Same objection.
16   A.     Yeah.  I mean, I --
17   Q.     Do you know whether the boundaries that are
18   reflected in Exhibit 11, the color-shaded map, were
19   created as part of an amendment process during the
20   redistricting process?
21         MR. KERCHER:  Object to the form of the
22   question.
23   A.     No.  I don't know anything about the
24   history, except that this looks an awful lot like the
25   benchmark plan, which I'm assuming is malapportioned.

Page 252

1    Q.     And so you did not consider, for example,
2    whether a district formation like what's reflected in
3    Exhibit 12 would have achieved equal apportionment,
4    correct?
5          MR. KERCHER:  Object to the form of the
6    question.
7    A.     Yeah.  I don't know if you could have kept
8    the benchmark plan here in place without altering it
9    at all.
10   Q.     Okay.  And you also don't know whether the
11   district boundaries reflected in Exhibit 12 would have
12   improved -- Well, strike that.
13         You don't know whether it was necessary to
14   draw the western boundaries of District 55 dividing
15   Killeen to shore up Republican partisan advantage in
16   Bell County, do you?
17         MR. KERCHER:  Object to the form.
18   A.     I'm not sure.
19   Q.     You're not offering that opinion in your
20   report, correct?
21         MR. KERCHER:  Object to the form.
22   A.     That's right.  The only opinion I'm offering
23   is that the district lines that were produced are
24   consistent with shoring up Republican voting strength.
25   Q.     And if, during the debate on the House

Page 253

1    redistricting plan, legislators discussed the fact
2    that the enacted western boundary of District 55 split
3    an African-American community in Killeen, that has no
4    impact on your opinion about the reason the boundary
5    was drawn that way, correct?
6          MR. KERCHER:  Object to the form of the
7    question.  He's already testified that he didn't rely
8    on any of the legislative history in reaching any of
9    his conclusions.  You already have the testimony that
10   you need 15 times on this question.
11         You may answer this question, Mr. Trende.
12   A.     I think you smuggled in an incorrect
13   premise, which is that I'm offering an opinion on the
14   reason for this being drawn.  They could have been
15   indifferent to the splitting of the African-American
16   community as a means of trying to achieve their
17   partisan objective, if such existed.  But regardless,
18   the opinion that I'm offering is that it is consistent
19   with improving their partisan performance in the area.
20         MR. BRACHMAN:  Can we go off the record for
21   two minutes?  I'm just going to check my notes.  I may
22   be nearly done, Mr. Trende.
23         (Recess taken.)
24   BY MR. BRACHMAN:
25   Q.     We're back on the record.  Mr. Trende,

Page 254

1  I just have a couple more questions for you.
2       Do you recall an article that you wrote in
3  "The Atlantic" about strategic voting choices in
4  primary elections where a voter doesn't expect to
5  win -- doesn't expect their preferred party to win in
6  the election?
7  A.     Yeah.  I co-authored that with
8  Jonathan Robinson.
9  Q.     Is it fair to say that that strategy you
10 described in that article is one of the ways in which
11 primary voting behavior can differ from general
12 election voting behavior?
13      MR. KERCHER:  Objection to form.  Do you
14 have a copy of the exhibit for him to look at?
15      MR. BRACHMAN:  I can get one, if you'd like.
16 BY MR. BRACHMAN:
17 Q.     Would you like a copy of your article?
18 A.     Sure.
19                   - - -
20      And, thereupon, Plaintiff's Exhibit No. 13
21 was marked for purposes of identification.
22                   - - -
23 BY MR. BRACHMAN:
24 Q.     Mr. Trende, do you recognize Exhibit 13 as
25 the article in "The Atlantic" you cowrote titled,

Page 255

1  "When Your Vote Doesn't Matter, Try Switching
2  Ballots"?
3  A.     Yes.
4  Q.     Okay.  And one of the strategies that you
5  and your co-author discuss in this article is a way
6  for voters from the party that are not expected to win
7  the General Election to influence the candidates of
8  the opposing party, correct?
9  A.     Yes.
10 Q.     Okay.
11 A.     We suggest doing that.  I don't know how
12 much people listen to us.
13 Q.     Sure.  And just at a very high level, is
14 that an example of voting behavior in primaries that
15 you would not expect to see in the General Election?
16      MR. KERCHER:  Object to the form of the
17 question.
18 A.     So it depends.  If we're going to go to a
19 very general level, the point is to try to get the
20 winner of the General Election to be closest to your
21 ideal positioning.  So the idea is if you're not going
22 to be able to influence the General, you try to
23 influence the outcome of the General Election via the
24 primary.  It's really the same thing, just in a
25 scenario where your truly preferred candidate can't

Page 256

1  win in the General Election.
2       And one thing for the record, since this is
3  now in the record in a court proceeding that could go
4  into the permanent record, there is an unmentionable
5  term in this article.  I would like to state that we
6  had -- our draft of it called it simply "an
7  unmentionable term," and the editors thought that the
8  term was amusing and put it in.  We acquiesced, but
9  that was not our initial approach.
10 Q.     I was not going to mention the unmentionable
11 term.
12      MS. PERALES:  I want the exhibit.
13 BY MR. BRACHMAN:
14 Q.     Is the strategy that is described with the
15 unmentionable term one reason why the results of
16 Primary Elections may not reflect the -- Well,
17 I'll withdraw that, and I'll ask a different question.
18      Is the strategy that's described in this
19 article something that could influence the winning
20 candidate in the Primary Election?
21      MR. KERCHER:  Object to the form of the
22 question.
23 A.     To the extent that voters from one party
24 attempt to vote in the other party's Primary, it would
25 affect the outcome of the Primary.

Page 257

1  Q.     Okay.  And it could also affect the
2  distribution of votes between competing candidates in
3  the Primary, correct?
4  A.     Yes.
5  Q.     And I'm just going to ask you one final
6  hypothetical.  If you would assume for me that the
7  voters who are voting in the other party's Primary
8  are -- so the voters who are engaged in the
9  unmentionable term are white voters, and the voters in
10 the party Primary that they are voting in are
11 predominantly minority, could the strategy described
12 in this article influence or skew the results of what
13 the minority candidate in the Primary might be?
14      MR. KERCHER:  Object to the form of the
15 question.  It's an incomplete hypothetical and lacks
16 foundation.
17      You may answer, if you can.
18 A.     So to make this a little less abstract
19 because I'm a terrible abstract thinker.  You're
20 talking about a situation where white Republicans, for
21 an example, intervene and vote in a Democratic Primary
22 to try to elect the least electable Democrat, would
23 that skew the minority candidate of choice?  I don't
24 know.  I guess there might be a situation where --
25 I don't think it would skew the minority candidate of

Sean P. Trende
September 02, 2022

Page 258

1  choice, but it could hypothetically skew the white
2  candidate of choice in the Primary.
3  Q.        And it would skew the distribution of votes
4  between Primary candidates, correct?
5          MR. KERCHER:  Same objection.
6  A.        It could, but those voters are nevertheless
7  real and so Primary voters are Primary voters.
8          MR. BRACHMAN:  Mr. Trende, I appreciate your
9  time today.  I will pass the witness.
10                    - - -
11              EXAMINATION
12  BY MR. McCAFFITY:
13  Q.        Mr. Trende, can you hear me?
14  A.        I can.
15  Q.        My name is Sean McCaffity; I represent the
16  Mexican American Legislative Caucus.  I'm going to try
17  to be really brief with you.  Okay?
18  A.        That is a-okay.
19  Q.        I figured it would be.
20          Before we get started, I want to follow up
21  on one thing, though.  I think the tweet that was
22  introduced into evidence as I think Exhibit 10, the
23  December 14th, 2020, tweet.  Do you know what
24  I'm talking about?
25  A.        Yes.

Page 259

1  Q.        All right.  In that tweet, you generally
2  talk about you were "nerding out" and drawing for
3  Texas and said it was possible to draw a map in CD 23
4  while keeping it two-thirds Hispanic and majority
5  Trump, correct?
6  A.        I think that's right.  Yeah.
7  Q.        So why did you tweet about making CD 23
8  majority Trump while keeping it 66 percent Hispanic?
9  A.        Honestly, I understand why you all are
10  gravitating to this tweet.  We have put more thought
11  into this tweet in this deposition than I probably did
12  writing it.  I just wanted to draw a heavily
13  Republican map that, loosely speaking, would seem to
14  satisfy VRA constraints and see if it could be done.
15          The same reason I say you can do a six-way
16  pizza-mander of Travis County, even though it doesn't
17  mean you should.  And to underscore how non-rigorous I
18  was being, one of my reasons you wouldn't necessarily
19  do that is "Oh, come on" reasons.
20  Q.        Okay.  Do you usually tweet about noteworthy
21  political commentary?
22          MR. KERCHER:  Object to the form of the
23  question.
24  A.        I tweet about noteworthy political
25  commentary, but I also tweet for fun.

Page 260

1  Q.        Yeah.  Do you believe there's tension
2  between making CD 3 a majority Trump district and also
3  a majority Hispanic district?
4          MR. KERCHER:  Object to the form.
5  A.        I don't know.  I haven't looked at that.
6  Q.        All right.  Do you know what percent of the
7  Hispanic vote Trump did receive in CD 23 in 2020?
8  A.        I don't think anyone knows that with
9  specificity.  We have estimates of varying value.
10  Q.        Okay.  If you would take your expert report,
11  please, and turn with me to Page 132.  This is the
12  section of the report where you respond directly to
13  some of Dr. Kousser's report, correct?
14  A.        That's correct.
15  Q.        The first sentence on Page 132 says, "Much
16  of the Kousser report is dealt with generally above."
17          In what way or what did you mean when you
18  were trying to refer to the sections above as being
19  responsive to the Kousser report generally?
20  A.        So the Kousser report talks a lot about the
21  ways the districts were constructed.  And so rather
22  than repeating everything that had been written above
23  about the construction of the districts, it just
24  seemed useful to -- it just seemed useful to make the
25  reference.

Page 261

1          The other thing is that, as you may recall,
2  originally there were different due dates for response
3  to Kousser and response to Duchin.
4  Q.        Uh-huh.
5  A.        And so I think the way it was initially
6  constructed was a short-ish response to Kousser.  And
7  then, once we got the extension on Kousser and Duchin,
8  it just got merged in this way.
9  Q.        Okay.  So, generally speaking, when you were
10  talking about the demographic population shifts in and
11  out of districts how the various districts were
12  shifted during the 2021 redistricting cycle, that's
13  what you're referring to when you say, "Much of the
14  Kousser report is dealt with generally above"?
15  A.        That's correct.
16  Q.        All right.  You do not do a specific
17  analysis of the circumstantial evidence of intent,
18  right?
19  A.        That's correct.
20  Q.        You don't do an analysis --
21  A.        Well, except to the extent that something
22  like the simulations would be circumstantial evidence
23  of intent.
24  Q.        Okay.  Fair.  You don't do an analysis of
25  the Arlington Heights factors in your report, correct?

Page 262

1   A.        Not directly.  I don't know if any of these
2   analyses would bear on the Arlington Heights factors,
3   but not directly.
4   Q.        You have not endeavored to formulate any
5   specific opinions applying the statistical measures
6   that you put forth in your report to the Arlington
7   Heights framework?
8             MR. KERCHER:  Object to the form of the
9   question.
10            You can answer.
11  A.        Asked that way, I'll agree.
12  Q.        Similarly, you have not endeavored to apply
13  your statistical analysis of the -- that ultimately
14  support your opinion that the redistricting maps were
15  consistent with political outcomes to the Senate
16  factors under Section Two of the Voting Rights Act?
17            MR. KERCHER:  Same objection.
18            You can answer.
19  A.        The way it's phrased, yes, I haven't
20  endeavored to specifically do that.
21  Q.        And your report doesn't outline any opinions
22  on either specific Arlington Heights factors or the
23  Senate factors?
24  A.        That's correct.
25  Q.        You do not do an analysis of the racial

Page 263

1   demographics of the populations that were moved or
2   shifted out of the various districts, correct?
3             MR. KERCHER:  Object to the form.
4   A.        That's correct.
5   Q.        All right.  In this second full paragraph on
6   Page 132, you indicate that Kousser provides evidence
7   that "Texas line drawers reconfigured the electoral
8   districts in a way that safeguarded Texas Republicans'
9   future interest," right?
10  A.        I'm sorry.  Could you refer me to a line
11  number.
12  Q.        It's the last sentence, basically, of the
13  second paragraph.
14  A.        That is what the sentence says.  Yes.
15  Q.        Okay.  So is your essentially general
16  critique of Kousser that his evidence is just
17  consistent as well with a political outcome for the
18  redistricting cycle?
19            MR. KERCHER:  Object to the form of the
20  question.
21  A.        I don't know that that's -- I don't know
22  that that's correct.  All I'm saying right there is,
23  on this point, we agree that Republicans had suffered
24  setbacks and that some of the evidence that
25  Dr. Kousser presents is consistent with political

Page 264

1   outcomes.  So, in that sense, we are on the same page.
2   Q.        All right.  In the next paragraph, the
3   second sentence says, "Where Kousser goes astray is
4   leaping to the conclusion that because in his view,
5   race and politics are intermixed, that they can be
6   treated as the same quantity."  Did I read that right?
7   A.        That's correct.
8   Q.        Why can race and politics not be treated as
9   the same quantity?
10  A.        Because being intermixed is not the same
11  thing as being the same thing.  If you have --
12  Assuming I recall Dr. Kousser's report correctly, and
13  assuming that the correlation is 67 percent between
14  race and politics, those still aren't the same
15  quantity, and there are places where they diverge that
16  can be of interest and illuminate things.
17  Q.        Do you agree that race and partisanship are
18  correlated in Texas generally?
19            MR. KERCHER:  Object to the form of the
20  question.
21  A.        I haven't looked specifically at that, but
22  there is almost certainly some correlation between
23  race and politics in general.
24  Q.        Do you agree that race and party politics
25  are highly correlated in Texas?

Page 265

1             MR. KERCHER:  Same objection.
2   A.        I don't know if .67 -- if that is, in fact,
3   the R square that he recited -- would qualify as
4   strongly or highly correlated; but there would be a
5   fair degree of correlation.  There are certainly some
6   places where the correlation is stronger than others.
7   Q.        Do you agree that race and party politics
8   are inextricably intertwined in Texas?
9             MR. KERCHER:  Object to the form of the
10  question.
11  A.        No.
12  Q.        Why not?
13  A.        Because there are areas specifically in
14  Dallas where you have white voters that are voting
15  very heavily Democratic.
16  Q.        Is that your only basis for why you believe
17  they're not inextricably intertwined?
18  A.        No.  There are areas where Hispanic voters
19  give a fair number of votes to Republican candidates.
20  There are relationships that crop up, but they are not
21  inevitable; and I don't think you can -- you're bound
22  by them in every example.
23  Q.        Do you take issue with any of the social or
24  cultural historical background of Texas and why or how
25  race and politics have become intermixed, whether or

Sean P. Trende
September 02, 2022

Page 266

1  not highly or generally?
2        MR. KERCHER:  Object to the form of the
3  question.
4  A.       I don't understand that question.
5  Q.       Have you done any analysis of the social,
6  cultural, or historical facts that have led to the
7  current state of race and politics in Texas to
8  understand why or why not race and party politics in
9  Texas may or may not be interrelated?
10       MR. KERCHER:  Object to the form of the
11 question.
12 A.       I did not.  I did not do a historical
13 analysis of the development of the Republican and
14 Democratic parties with respect to race in Texas.
15 Q.       Is it fair to say that your critique of
16 Dr. Kousser's conclusion that race and politics are
17 intermixed is based upon anecdotal evidence that, in
18 certain instances, white voters might vote Democratic
19 and, in certain instances, Hispanic voters might vote
20 Republican?
21       MR. KERCHER:  Object to the form of the
22 question.  Misstates his testimony.
23 A.       I won't agree with the characterization of
24 it as anecdotal, but I will agree that the reason that
25 I disagree with him is because there are areas of

Page 267

1  Texas where white voters do vote Democratic; Travis
2  County and Austin being another example.  And some
3  areas where minority voters aren't as overwhelmingly
4  Democratic.
5  Q.       You didn't do any testing or statistical
6  analysis yourself about the correlation between race
7  and party politics in Texas?
8        MR. KERCHER:  Object to the form of the
9  question.
10       You can answer.
11 A.       That's correct.
12 Q.       All right.  If Dr. Kousser's premise is
13 correct, or the assumption is correct that race and
14 party politics are intertwined, would it be fair to
15 say that your report would also show that the Enacted
16 Maps are "consistent with racially motivated
17 gerrymandering"?
18       MR. KERCHER:  Object to the form of the
19 question.
20 A.       That depends on what the law is on the race
21 and politics being intermixed and what judges and
22 courts are supposed to do in that circumstance.
23 Q.       Do you have an understanding of what the
24 current state of the law is on that issue?
25       MR. KERCHER:  Object to the form of the

Page 268

1  question.
2  A.       I don't know anything about Fifth Circuit
3  law.  My understanding from the Supreme Court is that,
4  if there is a relationship between race and politics,
5  it's not incumbent upon the legislatures to sort them
6  out.  That's a Thomas opinion from the '90s.
7  Q.       Is it possible for a map drawer to obtain
8  partisan or political objectives by using race as a
9  factor?
10       MR. KERCHER:  Objection. Calls for
11 speculation.
12 A.       Can you ask that again?
13 Q.       Is it possible for a map drawer to obtain
14 partisan or political objectives by using race as a
15 factor?
16       MR. KERCHER:  Same objections.
17 A.       I suppose you could, but it wouldn't be as
18 good as using political data.
19 Q.       Is it possible for a map drawer to obtain
20 partisan or political objectives in Texas by using
21 race as a predominant factor?
22       MR. KERCHER:  Object to the form of the
23 question.  Calls for speculation.
24 A.       I don't know if you would be able to do that
25 because you would have places like Austin where you

Page 269

1  would be drawing -- you maybe would draw a white
2  district and it would end up being heavily Democratic
3  for some of the districts in the Dallas/Fort Worth
4  area.  So no, I don't think I can agree with that.
5  Q.       All right.  What about if you were only
6  trying to use race in a regional area or in a -- for
7  specific districts as opposed to trying to do it
8  across the board state-wide?
9        MR. KERCHER:  Objection.  Calls for
10 speculation.
11 A.       I don't know whether it would be possible to
12 do so in areas of Texas.
13 Q.       Why don't you know that?  Is it because you
14 didn't do a racially polarized voting analysis?
15 A.       No, it's because I didn't examine every area
16 of Texas to see how maps could be drawn there if I
17 were drawing on the basis of race.
18 Q.       But your report does not rule out that race
19 could be used as a factor in the map-drawing process,
20 just that the maps, as they ultimately were
21 established, were consistent with also political
22 outcomes?
23       MR. KERCHER:  Objection, compound.
24 Objection, misstates testimony.
25       You may answer.

Sean P. Trende
September 02, 2022

Page 270

1   A.      The only thing that I am considering is
2   whether the maps are consistent with political
3   outcomes.  Whether that is -- whether that rules out
4   the possibility of race being used is not something
5   I considered.
6   Q.      Okay.  And just because I got an objection
7   to compound, I think you're right about that, but
8   I want to make sure I ask that more cleanly.
9           Your report does not rule out race as a
10  factor used in the map-drawing process?
11  A.      No.  All the report does is show that it's
12  consistent with politics.  There are areas -- there
13  are areas where, you know, white voters are split up
14  among the district on the basis of political voting,
15  but it doesn't cleanly rule out race as a possible
16  factor.
17  Q.      All right.  If you look at Page 132, your
18  last paragraph, where you talk about Kousser ignores
19  the fact that there are multiple instances where
20  district lines were drawn that have a partisan effect
21  but not a racial effect, that's the paragraph I'm
22  talking about.
23          You reference the Sixth District and you
24  say, "The Sixth District is good evidence of the
25  predominance of politics and redistricting.  The

Page 271

1   district now carves out the remaining purple and red
2   areas of Dallas County, optimizing the blue precincts
3   in Districts 30, 32, or 33."
4           Can you explain to me exactly what you're
5   talking about there?  I think I understand generally,
6   but I just want to make sure I understand exactly what
7   you mean.
8   A.      Yeah.  So I'm giving examples of -- and
9   I only give two, but I think earlier we discussed some
10  other ones.  But the Sixth District exists in such a
11  way that it captures all the remaining purple and red
12  areas of Dallas County not put into other districts,
13  which helps create a scenario that I describe in the
14  tables where there's almost no red precincts left in
15  30, 32 -- or I'm sorry.  No Trump-won precincts left
16  in 30, 32, or 33.  That's what I'm referencing.
17  Q.      But you don't look at the racial
18  demographics of those precincts, right?
19  A.      Right.  The Sixth is good evidence of the
20  predominance of politics and redistricting because
21  it's carving out all of the red -- purple and red
22  precincts that's left over in Dallas County.
23  Q.      I mean, could another way to say that it
24  packs blue precincts into 30, 32, and 33?
25          MR. KERCHER:  Object to the form of the

Page 272

1   question.
2   A.      Yeah.  "Packing" is a term of art that is a
3   vague term of art.  That's why I used the term
4   "optimizing" the blue precincts in District 30, 32, or
5   33.
6           MR. McCAFFITY:  Objection.  Nonresponsive.
7   BY MR. McCAFFITY:
8   Q.      Is that another way of saying it, though?
9           MR. KERCHER:  Same objection.
10  A.      I don't know whether that's also packing.
11  I use the term "optimizing" because it's distributing
12  them in the most efficient way and that's the term
13  that I prefer.
14  Q.      You don't know who is distributed in the
15  most efficient way because you didn't look at the
16  racial demographics of those precincts that are put
17  into 30, 32, and 33?
18          MR. KERCHER:  Objection, compound.
19  Objection, asked and answered.
20  A.      As I said, no, I didn't look at the racial
21  makeup of the precincts.  But I do know that almost
22  every red precinct or Trump-won precinct in Dallas
23  County is placed in one of the Republican districts
24  because -- in part because of the way District 6 is
25  drawn.

Page 273

1   Q.      Okay.  And now flip over to Page 19 of your
2   report.  On Page 19, right below the figure, you say,
3   "In the DFW Metroplex itself, see figure 9, the
4   district gains residents by extending into politically
5   marginal portions of Dallas County."  Did I read that
6   right?
7   A.      Yes.
8   Q.      What do you mean by "politically marginal"?
9   A.      Not blue.
10  Q.      Not blue.  Why is that politically marginal?
11  A.      It goes into areas of Dallas County that
12  aren't the heavily blue areas of Dallas County.
13  Q.      Okay.
14  A.      I don't know how to be more specific than
15  that.
16  Q.      So politically -- Well, could you be more
17  specific about it by talking about what you -- from
18  whose margin you're looking at?  You're saying this is
19  politically marginal because they're Republican
20  districts?
21  A.      No.  I am saying it extends into -- the DFW
22  into Dallas County and picks up politically marginal
23  portions and also helps take out whatever is left of
24  the red precincts in Dallas County.
25  Q.      All right.  I think I understand.

Page 274
1    Flip to Page 133, which is the second half
2  of your analysis of Dr. Kousser's report.  In the
3  first full paragraph, you talk about a heat map for
4  District 24.
5  A.    Yes.
6  Q.    And you say, if you had looked at that, it
7  would be obvious that the white areas north of Dallas
8  are split almost perfectly along political lines
9  rather than racial lines.  What heat map are you
10  referring to there?
11  A.    Do I refer to a heat map?
12  Q.    Well, you do in the text there.  That's why
13  I'm asking because there's not a citation, and I don't
14  recall seeing it in the statistical information you
15  produced.  I'm trying to understand where you got
16  this.
17  A.    I'm sorry.  I just -- I'm not trying to be
18  disagreeable.  Can you point me to the sentence that
19  has it?
20  Q.    The second full -- Sorry.  The third full
21  sentence of the first full paragraph, 133, it says --
22  A.    Okay.
23  Q.    -- "Had Dr. Kousser provided."
24  A.    I see it now.  I see it.  So I think what
25  I'm referring to there -- what I'm referring to, I

Page 275
1  guess it's a choropleth map and not a heat map as
2  such.  But if you look at figure 25 --
3  Q.    Okay.  What page is that on?
4  A.    Page 40.
5  Q.    Okay.
6  A.    Yeah.  These are -- the colors -- the
7  precincts that are non-Hispanic white plurality are
8  shaded.  So as you can see -- Well, it actually
9  doesn't come out that cleanly on the printout.
10    But on -- In Dallas County, the district
11  lines goes almost perfectly along the red/blue
12  boundary, even though it doesn't go perfectly along
13  the non-Hispanic white boundary.
14  Q.    For CD 6 or 24?
15  A.    I'm sorry.  CD 24.
16  Q.    Okay.  My copy, unfortunately, is not a
17  color copy, so it's harder for me to see.  I wanted to
18  see -- I just wanted to know what you are referring to
19  there, so that helps me.  I appreciate that.
20  A.    Yeah.
21  Q.    And then, in the next paragraph, you talk
22  about -- in the second sentence, you say, "When
23  examining the districts in Austin and Houston on a
24  precinct level, we plainly see mapmakers making
25  choices consistent with a political explanation."

Page 276
1    That's on Page 133.  The second sentence of
2  the last paragraph.
3  A.    Yes, I see that.
4  Q.    So what districts in Austin and Houston are
5  you referring to there?
6  A.    So in the Houston area, I talk about
7  District 7, choices being made on a political basis,
8  consistent with the political basis.
9  Q.    Okay.
10  A.    District 8, I talk about the political
11  effects of the way the map's drawn.
12    District 9, I talk about only to the extent
13  that it's impacted by the way District 7 is drawn.
14    District 14, I talk about the political --
15  or I probably could have skipped it since we aren't
16  talking much about Beaumont, but I talk about the
17  effects in Beaumont.
18    District 22, District 38, and Travis County.
19  I talk about District 10, District 21, District 25,
20  insofar as it's being moved out of Travis County,
21  District 31 and 37.
22  Q.    Okay.  So you're not -- basically, when
23  you're talking about in this paragraph, rebutting
24  Kousser, talking about the Austin and Houston
25  districts being examined on a precinct level, you're

Page 277
1  referring to the analysis earlier in your report for
2  each of the Houston and Austin Congressional Districts
3  where you show how the maps or the populations were
4  shifted in this redistricting cycle?
5  A.    Yes.
6  Q.    Okay.  All right.  Did you have a chance to
7  see the rebuttal report from Dr. Kousser?
8  A.    I did.
9  Q.    All right.  Do you remember -- have you
10  formulated any opinions in response to Dr. Kousser's
11  rebuttal report?
12  A.    Yeah.  I read it and had reactions.
13  Q.    I need to use my time to figure out what
14  your opinions are about that, so why don't you tell me
15  about your reactions to Dr. Kousser's rebuttal report.
16  A.    Off the top of my head, I couldn't do that.
17  Q.    Do you have any recollection of what
18  opinions you formulated in response to his rebuttal
19  report?
20  A.    I'm sorry.  Not in hour eight of the
21  deposition.  Everything is blurred together at this
22  point.
23    MR. McCAFFITY:  Give me one second.  Let's
24  go off the record for a minute and let me find his
25  rebuttal report and see if I can refresh his

Page 278

1   recollection on a couple things and then I'll be done.
2          MR. KERCHER:  Okay.
3          (Recess taken.)
4          (Mr. Brachman left the deposition.)
5          MR. McCAFFITY:  Let's go back on the record.
6   BY MR. McCAFFITY:
7   Q.      Mr. Trende, have you been asked to formulate
8   any specific opinions in response to Dr. Kousser's
9   rebuttal report that you intend to offer at trial?
10         MR. KERCHER:  Object to the form of the
11  question.
12         You can answer.
13  A.      I wasn't asked to formulate any specific
14  opinions.
15  Q.      Is there any thesis from his rebuttal
16  opinion that you, sitting here today, that you recall
17  that you disagree with?
18         MR. KERCHER:  Object to the form of the
19  question.
20         You may answer.
21  A.      I remember not being particularly impressed
22  with it.  But I'm being dead honest that, at this
23  point, I don't remember what's in that report.
24         MR. McCAFFITY:  Okay.  All right.
25         Mr. Trende, that's all the questions I have

Page 279

1   for you today.  I appreciate it.
2          I'll pass the witness.
3          THE WITNESS:  Thanks.
4          MR. SWEETEN:  Mr. Rudensky, Mr. Shenton,
5   anyone else have questions?  They are both with Fair
6   Maps.
7          MR. RUDENSKY:  Not from us.
8          MR. SWEETEN:  We'll reserve our questions
9   for the time of trial.  Thank you, all.
10         (Signature not waived.)
11         - - -
12         And, thereupon, the deposition was concluded
13  at approximately 6:05 p.m.
14         - - -
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Page 280

1   State of Ohio    :
                     SS:
2   County of Franklin:
3          I, SEAN P. TRENDE, do hereby certify that I
4   have read the foregoing transcript of my deposition
5   given on September 2, 2022; that together with the
6   correction page attached hereto noting changes in form
7   or substance, if any, it is true and correct.
8          _____
                SEAN P. TRENDE
9
10         I do hereby certify that the foregoing
11  transcript of the deposition of SEAN P. TRENDE was
12  submitted to the witness for reading and signing; that
13  after he had stated to the undersigned Notary Public
14  that he had read and examined his deposition, he
15  signed the same in my presence on the _____   day of
16  _____, _____.
17
           _____
18               Notary Public
19  My commission expires _____
20              - - -
21
22
23
24
25

Page 281

1               CERTIFICATE
2   State of Ohio    :
                     SS:
3   County of Franklin:
4          I, Susan L. Coots, Notary Public in and for
5   the State of Ohio, duly commissioned and qualified,
6   certify that the within named SEAN P. TRENDE was by me
7   duly sworn to testify to the whole truth in the cause
8   aforesaid; that the testimony was taken down by me in
9   stenotypy in the presence of said witness, afterwards
10  transcribed upon a computer; that the foregoing is a
11  true and correct transcript of the testimony given by
12  said witness taken at the time and place in the
13  foregoing caption specified.
14         I certify that I am not a relative,
15  employee, or attorney of any of the parties hereto, or
16  of any attorney or counsel employed by the parties, or
17  financially interested in the action.
18         IN WITNESS WHEREOF, I have set my hand and
19  affixed my seal of office at Columbus, Ohio, on this
20  16th day of September, 2022.
21  _____
           SUSAN L. COOTS, Notary Public
22          in and for the State of Ohio and
            Registered Professional Reporter.
23
24  My Commission Expires January 10, 2025.
25

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**Exhibits**

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**EX 0001 Sean P. Trende 09022 2**
  5:11 7:18,22
  95:1 113:17
  151:2 209:14
  212:10
  214:15 234:9
  237:13
**EX 0002 Sean P. Trende 09022 2**
  5:12 69:13,
  15
**EX 0003 Sean P. Trende 09022 2**
  5:15 81:20,
  22 98:14
**EX 0004 Sean P. Trende 09022 2**
  5:17 98:9,
  16,17 99:3
**EX 0005 Sean P. Trende 09022 2**
  5:19 115:1,6
**EX 0006 Sean P. Trende 09022 2**
  5:21 117:9,
  20 119:2
**EX 0007 Sean P. Trende 09022 2**
  5:23 119:18,
  23

**EX 0008 Sean P. Trende 09022 2**
  6:2 139:8,13
**EX 0009 Sean P. Trende 09022 2**
  6:4 140:19
**EX 0010 Sean P. Trende 09022 2**
  6:6 146:2,7
  258:22
**EX 0011 Sean P. Trende 09022 2**
  6:8 232:1,3
  235:22 239:2
  240:19 242:9
  244:2 247:20
  251:2,12,18
**EX 0012 Sean P. Trende 09022 2**
  6:10 250:4,
  5,7 251:6,13
  252:3,11
**EX 0013 Sean P. Trende 09022 2**
  6:12 254:20,
  24

---

**1**

---

**1**
  7:18,22 9:11
  16:8,9 47:20
  52:14,21
  53:5,15
  54:15 55:12,
  14 56:6,14

  58:1,2 64:9
  67:9 68:8,9
  73:15,18
  95:1 113:17
  119:1 140:5
  151:2 166:14
  167:16 168:8
  179:21 181:2
  209:14
  212:10
  214:15 216:7
  217:20 218:2
  219:13 225:6
  234:9 237:13
  239:22 240:2
**10**
  12:9 129:2,5
  136:9,14
  146:2,7
  242:18 250:3
  258:22
  276:19
**10-minute**
  135:6 207:13
**100**
  39:6 47:3,9
  48:7,20,22
  77:4,16
  78:15,23,24
  106:21
  136:10
  169:22
**100,000**
  18:9,11,18,
  19,21 19:11,
  13 41:14
  206:12
**101**
  106:21
**102**
  170:6 172:23
**104**
  174:3
**107**
  172:1,9
**109**
  250:23

**10:56**
  92:5
**10th**
  223:25
**11**
  9:8 126:25
  229:14,15
  231:16
  232:1,3
  235:22 239:2
  240:19 242:9
  244:2 247:20
  251:2,12,18
**115**
  52:5 72:12,
  13 74:11,19
  154:17
  158:20
  159:23
  160:20
**116**
  59:8,16
**117**
  59:16
**118**
  59:16 175:4,
  7,12,18
  185:16,25
  186:5,14
**119**
  59:16,23
**11:00**
  92:6
**12**
  229:24
  250:5,7
  251:6,13
  252:3,11
**12.5**
  54:7,8,9
**12.6**
  54:11
**125**
  183:13
**12:45**
  92:7 93:2

Sean P. Trende
September 02, 2022

**13**
  147:16
  183:17
  244:12
  254:20,24
**13-2**
  147:16
**131**
  240:20
**132**
  113:16,18
  260:11,15
  263:6 270:17
**133**
  112:1,2
  274:1,21
  276:1
**134**
  235:24 239:3
**136**
  232:15
**14**
  64:25 83:3,9
  276:14
**140**
  223:16
  245:16
**141**
  65:1
**143**
  248:10
**144**
  100:25
  247:21
  251:12
**145**
  98:24 99:4,
  9,11 100:14
  101:8
**149**
  244:3
**14th**
  146:11
  258:23
**15**
  171:20
  173:2,15,24

  174:13
  184:8,11
  187:3,5,12
  193:9 253:10
**152**
  242:9
**157**
  118:1,4
  119:3,6
**15th**
  174:23
**16**
  185:8
**16-1**
  147:15
**16th**
  223:25
**17**
  111:17
  244:12
**18**
  169:12
**186,725**
  174:3
**19**
  234:9 273:1,
  2
**19.1**
  237:16
**1900s**
  46:2
**192,000**
  174:7
**195**
  175:2 186:1,
  7,13
**199**
  138:16
**1990s**
  47:12 61:10
  134:21
  163:14

———————————

**2**

———————————

**2**
  69:13,15

  93:1 110:2,3
  119:1 140:5
  219:13,14
  221:7,8
  229:15
  231:17
**2.4**
  225:10
**20**
  46:14 79:9,
  11 171:13
  193:17,18
  195:1 217:4
  235:4
**20.1**
  67:1,12
**20/23**
  138:20
**200-page**
  13:7
**2001**
  245:17
  246:23
**2004**
  118:10 196:6
**2010**
  99:16 100:12
**2011**
  101:6,13
  137:3,18,22
  180:3,6
**2012**
  117:15,22
  118:20 120:3
  121:4,14,22
  139:5 140:13
  171:12 195:4
**2013**
  139:23
  140:4,14
**2014**
  116:10
  121:16
  196:12
**2016**
  121:17
  183:2,10,21

  184:2 195:17
  222:20
**2017**
  195:13
**2018**
  223:23
**2019**
  115:12
**2020**
  121:18
  146:11
  170:10,23
  171:14
  178:11,15
  181:25
  183:2,10,21
  186:19
  187:6,12,16
  190:4,16
  192:16
  195:17
  215:13
  221:3,8
  223:1,23
  224:12
  225:22 234:4
  258:23 260:7
**2021**
  127:25
  175:3,11,18
  179:21 181:3
  186:4,23
  208:5,12,17
  209:3 212:23
  213:19 214:8
  228:8 232:17
  235:25
  240:21
  242:11 244:4
  247:22
  261:12
**2021/2022**
  199:13
**2022**
  93:1 178:10
  187:17
  188:13,16,21

**203**
 66:1,13,16
 70:21 75:3,
 10
**204**
 66:1,16
**206**
 175:21
 177:7,24
 178:14
 182:20
 185:14
 187:2,3,7
 188:12
**207**
 183:24
**208**
 131:3 177:7
**209**
 218:12
**209-page**
 154:6
**21**
 276:19
**21.3**
 237:17
**210-page**
 125:23
 138:20
**22**
 145:16 241:4
 242:18
 276:18
**23**
 96:17 128:20
 135:11,15,22
 137:4,15,17,
 23 138:5,9,
 11,17,24
 139:4 140:6,
 11 146:22
 184:14,17
 204:1,2,12
 205:8,18
 206:4,6,10,
 19,25 207:2
 259:3,7

 260:7
**24**
 29:1 114:14
 128:16,20,
 21,22,23
 129:1,19,23
 140:5 274:4
 275:14,15
**240**
 116:16
**240-character**
 116:12
**25**
 24:12,17
 128:15
 138:3,4,7
 206:5 233:11
 244:18 275:2
 276:19
**25.01**
 241:10
 242:21
 248:5,7
**25.1**
 246:2
**26**
 26:15 27:3,
 5,16 28:5
 31:17 32:3
 33:1 39:21
 140:6 176:11
 245:24
 246:3,8,22
**27**
 26:16 27:8
 28:5,15 29:2
 36:7,9,12
 38:25
**28**
 146:23
 171:20,23
 173:10,17
 184:21,24
 205:9 206:12
 237:14
**28th**
 174:4,7,8

———————

**3**

———————

**3**
 81:20,22
 98:14 119:1
 140:5 141:16
 229:17,25
 230:13,16,19
 231:1 232:25
 233:10,19
 234:4,5,14,
 18,24 235:6
 260:2
**3-point**
 225:8
**30**
 198:9 237:5,
 11,15,25
 271:3,15,16,
 24 272:4,17
**31**
 276:21
**32**
 62:7,19,25
 114:15
 146:21
 147:25
 149:3,5
 237:5,11,25
 271:3,15,16,
 24 272:4,17
**33**
 114:15
 236:23
 237:1,3,5,12
 271:3,16,24
 272:5,17
**33.5**
 68:15,20
 69:9
**34**
 131:2 171:21
 172:8 173:4,
 18 174:22
 185:2,5
 188:13,15
 193:4 221:6

**34th**
 171:12
 174:4,7,9
 194:25
**36**
 140:6
**369**
 144:17
 145:3,8
**37**
 276:21
**371,209**
 230:1,10,12
**379**
 141:14
**37th**
 114:2
**38**
 111:14
 276:18

———————

**4**

———————

**4**
 29:2,5 32:2
 39:10 98:9,
 16,17 99:3
 119:1 212:11
**40**
 42:11 128:9
 246:13 275:4
**40-some**
 190:11
**40.01**
 247:6
**40.1**
 246:16
**41**
 10:12 16:12
**42**
 26:10 31:18
**42.7**
 230:20 231:9
**43**
 26:10 27:8
 28:11 29:22
 35:19 37:1

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 133:20,22,25 | **50.001** | 117:9,20 | 152:6,7 |
| **43.07** | 41:25 42:6, | 119:2 151:3, | 154:11 189:4 |
| 186:15 | 13 44:17 | 10,21 | 212:10 241:4 |
| **45** | 85:7 | 154:12,13 | 276:7,13 |
| 28:23 30:14, | **50.1** | 158:14 | **7-point** |
| 16,19 31:6 | 67:9 224:14 | 160:19 | 234:3 |
| 42:10 43:8, | 225:9 246:13 | 209:14 | **70** |
| 14 83:25 | **50.21** | 234:10,13,25 | 46:23 47:1 |
| 92:1 | 66:24 67:3, | 235:5 | 116:3,19 |
| **46** | 22 | 236:15,19,22 | 122:14,18,19 |
| 215:12 | **50/50** | 237:1,2 | 123:6,8 |
| **47.5** | 78:18 | 272:24 | 198:10 |
| 231:3 | **51** | 275:14 | **70/25** |
| **47.7** | 41:20 225:7 | **60** | 115:24 |
| 224:13 | **51.18** | 39:17 84:6, | **70/30** |
| 225:10 | 224:5 | 18 85:4,5 | 46:10,11 |
| **48.5** | **51/49** | **62** | 115:23 |
| 231:12 | 198:5 | 235:7 | 198:25 |
| **48.61** | **52** | **63** | **70/80** |
| 186:16 | 41:22 43:11 | 118:12 | 46:10 |
| **49** | **53,071** | **65** | **71** |
| 118:11 | 174:4 | 55:8 | 106:20 |
| **49.5** | **53.5** | **65/35** | **72** |
| 230:19 | 71:7 173:7 | 116:1 | 106:20 |
| **49.99** | **54** | **66** | **73** |
| 83:24 | 225:6 | 146:23,24 | 174:12 |
| **4th** | 250:15,21 | 205:9,10 | **76** |
| 139:23 | 251:5,7 | 259:8 | 172:10,13 |
| | **54.03** | **67** | **77** |
| | 224:8 | 38:8 264:13 | 174:25 175:1 |
| ___ **5** ___ | **54.3** | 265:2 | **78** |
| | 224:6 | **69** | 172:5,8 |
| **5** | **55** | 136:2,17,24 | **79** |
| 38:19 39:1,6 | 29:25 30:10, | **6th** | 174:21,22 |
| 115:1,6 | 24 31:4,7 | 114:4 | 175:1 |
| 119:2 | 39:15 87:15 | | **7th** |
| **50** | 174:5,6 | | 98:19 |
| 42:9 78:15 | 248:4,14 | ___ **7** ___ | |
| 84:5 118:11 | 251:5,7 | | |
| 148:23 | 252:14 253:2 | **7** | ___ **8** ___ |
| 158:11 198:5 | **59** | 9:11,14 | |
| 205:19 225:3 | 235:9,11 | 28:24 75:13, | **8** |
| 246:10,13 | | 23 76:2 | 60:9 139:8, |
| **50-percent-** | | 115:12 | 13 175:23 |
| **plus-1** | ___ **6** ___ | 119:18,23 | 176:15,20, |
| 67:24 68:2 | | 146:21 | 24,25 177:16 |
| **50.0001** | **6** | 147:25 | 234:9 276:10 |
| 83:23 87:13 | 38:19 39:1,7 | 148:10,11 | |

Sean P. Trende
September 02, 2022

80
  124:6
82
  59:16
83
  59:16,19
84
  59:16,19
85
  59:17,19
  64:16
89,000
  174:6
8th
  98:19 120:3
  224:4,13,17
  225:7,10

**9**

9
  94:25 95:2
  124:12,15
  126:6 140:5,
  19 214:15
  241:4 242:18
  273:3 276:12
90
  12:8 46:13
  48:13
90s
  268:6
96
  192:19
98
  135:25 136:2
99
  105:18,19
  106:1
9th
  224:5,14,17
  225:6,9

**A**

A-N-S-O
  105:13

a-okay
  258:18
A-P-P-E-L
  213:24
AAPI
  232:21,25
  233:4,12
  234:5 240:25
  241:5,9,24
  244:9,13,17
  245:7
Abbott
  137:7 151:16
  204:5,14,18
  205:16
abbreviations
  140:7
abhorrent
  121:17
ability
  110:16,21
  211:10 215:2
  216:2
able
  15:12 21:13
  70:14,19
  77:20 93:8
  113:8 136:14
  156:23
  165:10
  202:19
  240:10
  255:22
  268:24
above
  29:22 33:12
  39:21,24,25
  40:2 48:17
  178:20
  205:19
  260:16,18,22
  261:14
absolutely
  152:4
abstract
  164:18
  257:18,19

academic
  109:17
accelerate
  117:5
accept
  59:25 73:4
  74:25 75:2
  236:9
acceptable
  162:12
  163:2,3,21
accepted
  47:23 49:7
  50:11,23
  51:12,20
accomplish
  145:11 239:9
account
  77:1 110:4
  207:1
accurate
  76:8,10
  77:3,4 99:4
  106:1 115:14
  117:20 120:9
  133:25
  139:25
  141:8,10
accurately
  93:9,19
  145:7
achieve
  25:20 197:8
  200:14
  239:10,19
  241:15,20
  242:4 243:1,
  3,10,18
  245:1,12
  253:16
achieved
  252:3
acquiesced
  256:8
acronym
  17:19 47:22

across
  163:6,10
  212:3 269:8
ACS
  80:18 161:7
Act
  25:12,14,17,
  20 53:5
  110:1 137:24
  138:5 162:22
  163:1,18
  199:17
  200:15,18,23
  202:8,12
  262:16
Action
  207:20
actual
  12:22 220:8,
  15
Adam
  179:24
  180:1,24
  181:1
add
  150:6 202:13
  226:7 240:14
added
  230:13,16
adding
  226:7
additional
  83:8 211:16
address
  182:13
addressed
  110:6
adjacent
  250:22
adjective
  216:25
admission
  144:11
admit
  142:5
admits
  141:21

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 143:15 | **African-** | 266:23,24 | **America** |
| 144:14 | **american-** | 269:4 | 117:14,22 |
| **advance** | **ability-to-** | **agreed** | **American** |
| 150:23 179:8 | **elect** | 138:8 | 8:10 42:25 |
| **advantage** | 201:14,18 | **aim** | 46:10 103:16 |
| 124:24 | **afternoon** | 145:11 | 150:20 |
| 125:5,18 | 93:1,5 | **Alabama** | 258:16 |
| 214:22 | 150:18,22 | 53:20 64:13 | **Americans** |
| 215:1,17,18 | **afterwards** | **Alfred** | 46:12,14 |
| 216:6,15,22 | 193:2 | 82:4 103:14 | 102:23 122:5 |
| 217:6,12,23 | **age** | **algorithm** | 141:22 |
| 218:4 219:4 | 14:19 15:11 | 12:11 14:17, | 143:15 |
| 220:10,21 | 79:8,10,14 | 24 15:4 20:3 | **amount** |
| 241:13 | 136:5 158:11 | 22:3 24:8 | 64:18 65:2 |
| 242:25 | 169:6,12 | 47:15 | 219:9 235:14 |
| 243:4,13 | 170:1 205:11 | **algorithms** | **amusing** |
| 244:21 245:5 | **ago** | 12:20 | 256:8 |
| 246:23 | 51:6 145:16 | **align** | **analyses** |
| 252:15 | 153:3 154:12 | 129:11 | 77:13 103:11 |
| **adverb** | 185:18 | **allow** | 159:25 262:2 |
| 216:25 | **agree** | 42:22 77:20 | **analysis** |
| **aerial** | 15:23 80:6 | 86:12 | 9:4 10:6 |
| 47:6 | 125:10 | **allows** | 11:21 22:19 |
| **affect** | 154:13 156:8 | 14:22 | 23:22 25:24 |
| 101:25 | 157:8,25 | **aloud** | 37:7 45:15, |
| 141:20 | 162:10 | 115:19 | 17 47:5,19 |
| 143:14 | 163:18,25 | **alter** | 48:5 49:17 |
| 256:25 257:1 | 164:11 | 101:1 | 50:6 58:1 |
| **affects** | 165:21 166:1 | **altering** | 62:10 63:7, |
| 144:10 | 169:14 184:7 | 252:8 | 13 66:6,9,10 |
| **afield** | 194:5 196:17 | **alternate** | 67:4 68:10, |
| 88:2 | 197:1,6 | 241:19 | 19 69:3 |
| **African** | 199:2 200:17 | **alternative** | 72:21 73:2, |
| 46:10,12 | 201:24 | 24:19 70:2,4 | 4,6,11,13, |
| 102:23 | 202:12 | 152:9,15,19 | 18,19,25 |
| 103:16 122:4 | 221:15,16 | 158:9,10,22 | 74:5 75:25 |
| 141:21 | 223:6 227:23 | 159:14,18,21 | 77:22 80:11 |
| 143:15 | 232:23 233:9 | 176:8 212:1 | 83:4,5 86:25 |
| **African-** | 241:3 | 244:25 | 89:19 90:6 |
| **american** | 242:17,20 | 245:10 | 91:8,11 |
| 121:24 | 244:11,16 | **Alternatives** | 95:18 |
| 122:8,12 | 245:23 | 69:23 | 103:20,24 |
| 123:3 129:20 | 246:15 | **amended** | 104:8,14,22 |
| 130:19 | 248:3,6,13 | 249:24 | 105:2,10,11 |
| 136:17,19 | 251:4 262:11 | **amendment** | 110:25 |
| 253:3,15 | 263:23 | 144:9 251:19 | 111:22 |
| | 264:17,24 | | 127:11 128:7 |
| | 265:7 | | 130:21 131:1 |

153:9,18,23
155:9,24
157:15
160:3,7
186:4,22
187:13
188:2,18
189:16,22
192:14
193:1,22
194:3,4,21
195:6,8,18,
22 207:4
212:7 225:21
226:1,10,11,
19,20
261:17,20,24
262:13,25
266:5,13
267:6 269:14
274:2 277:1
**analysts**
78:7,10
**analyze**
25:25 26:1
158:9 182:2
199:15
211:18
230:15
237:25
238:5,12
**analyzed**
18:21 19:4,7
84:21 199:3
228:19 230:9
234:2,18
239:25
**analyzes**
238:20
**analyzing**
18:24 24:24
28:3
**anchored**
201:13
**and/or**
235:1
**Anderson**
91:23 92:9

93:4,6 98:12
100:2,3,20,
21 108:3
117:12
118:23,25
119:5,7,21
135:5,9
139:11
140:22 146:5
149:24
150:2,10
203:25
**anecdotal**
266:17,24
**angle**
126:17
**Anglo**
187:22 189:1
**Anglo-preferred**
197:9,19
205:21
**Anglo-republican**
122:9
**Anglos**
184:1 188:3
197:7,15
198:16
**Ansolabehere**
105:13
182:18
199:23
**answer**
8:22 10:8
11:10 31:5
50:17 78:1
82:11,14
85:2 88:9,21
90:23 93:8,
13,18 100:22
108:4,6
109:20
111:21
127:18
128:20
144:19
145:25

154:1,9
155:12,15
156:23,25
168:13,15
170:19
176:13,17
177:21
188:10 189:7
191:20
192:3,4
196:1 201:7
202:15
204:17 208:9
209:7 210:7
211:21
212:6,19
213:1 215:8
217:15
220:12
226:18
228:15 237:9
239:7 243:8
244:24
247:11
251:11
253:11
257:17
262:10,18
267:10
269:25
**answered**
37:20 111:15
121:11
126:21
143:24 158:6
202:5 207:22
213:21
214:5,11
218:8 227:10
228:10
240:5,15
241:17 242:2
243:25
249:14
272:19
**answering**
46:4 111:8,9
200:5

**answers**
150:3,7
219:2
**Antonio**
96:22,24
97:3,7,13
104:17,23,24
105:3 136:4,
22 170:13,14
184:18
203:4,8,14
**Antonio/el**
96:18
**anybody**
62:16 205:16
**anymore**
189:15,21
**anyone**
193:10 209:4
260:8
**apologize**
40:1 82:20
150:23
**App**
147:5,7
**apparently**
116:7
**appeal**
194:7
**appealed**
204:10
**appearance**
195:23
**appearances**
55:18 64:1
166:19
**appeared**
121:22
**appears**
13:8 36:19
39:9 141:10
149:3 186:10
**Appel**
165:2,5,9
213:24 214:2
**apples**
44:20

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **application** | 131:20 | **around** | 238:1,15,16 |
| 18:6 | 132:12 136:4 | 28:23 32:8 | 240:5,15 |
| **applications** | 149:2,11 | 107:3 | 241:17 242:2 |
| 156:13 | 159:15 | 146:19,23,24 | 243:24 |
| **apply** | 162:25 | 156:20 174:4 | 249:13 |
| 262:12 | 166:19 | 198:12,16 | 262:11 |
| **applying** | 170:10,22 | 246:9 | 272:19 |
| 262:5 | 200:19 | **arrive** | **asking** |
| **apportion** | 202:10 | 99:17 100:13 | 65:9 111:19 |
| 77:1 | 223:19,24 | **art** | 119:3,5 |
| **apportionment** | 241:6 | 40:15 272:2, | 121:5,6 |
| 252:3 | 244:13,17,22 | 3 | 157:24 |
| **appreciate** | 245:21 246:9 | **article** | 226:10 |
| 100:17 258:8 | 249:24 | 49:13,17,18 | 251:14 |
| 275:19 | 253:19 | 105:13 119:2 | 274:13 |
| **approach** | 269:4,6,15 | 120:1,9,14, | **asks** |
| 13:17,18 | 276:6 | 15 140:25 | 90:22,23 |
| 18:12 23:12 | **areas** | 141:3,5,9 | 145:25 |
| 71:23 80:15, | 89:14 97:18, | 144:4 182:3, | **aspect** |
| 17 104:22 | 20 105:6,15 | 10,13,19,22 | 168:9,10 |
| 141:25 | 114:5 117:7 | 254:2,10,17, | **aspects** |
| 194:11 242:4 | 126:13 | 25 255:5 | 127:22 |
| 256:9 | 131:12 | 256:5,19 | 178:15 |
| **approached** | 132:15 | 257:12 | 181:25 |
| 133:14 | 134:23 | **articles** | **assessing** |
| 207:25 | 152:11,24 | 51:1 195:15 | 49:22 63:5 |
| **approaches** | 203:4 233:3 | **Asian** | **assign** |
| 12:13 13:16 | 241:5 246:1, | 59:20 60:10 | 78:18,25 |
| 18:13 25:11 | 16 248:4 | 103:2 | 79:3 186:8 |
| 47:12 71:24 | 265:13,18 | **asked** | **assigned** |
| **approximation** | 266:25 267:3 | 23:18 33:21 | 15:2 79:10 |
| 10:17 | 269:12 | 37:19 49:4 | **assigning** |
| **apps** | 270:12,13 | 52:9 74:17 | 78:22 |
| 156:13 | 271:2,12 | 102:9 111:15 | **associated** |
| **area** | 273:11,12 | 113:9,13 | 204:22 |
| 28:12 32:23 | 274:7 | 114:22,23 | **assume** |
| 55:17 66:21 | **arguable** | 121:10 | 78:12 137:19 |
| 71:4,16 | 110:14,16,21 | 126:20 133:7 | 145:15 164:1 |
| 72:1,3,8 | **argue** | 143:23 151:1 | 227:22 |
| 95:23 96:18 | 35:22 | 156:5 158:5 | 228:22 |
| 97:19 | **argument** | 176:6,7 | 240:11 257:6 |
| 103:17,21 | 86:1,4 | 201:8 202:4, | **Assumes** |
| 104:3,11,15, | **Arizona** | 16 209:11 | 97:9 189:5 |
| 17,24 124:5 | 140:5 199:12 | 213:20 | 205:22 |
| 128:13 | 200:3 | 214:4,10,12 | **assuming** |
| 129:20,24 | **Arlington** | 218:7 225:15 | 69:10 96:13 |
| 130:3,5,10 | 261:25 | 227:9 228:9, | 213:3 230:7 |
| | 262:2,6,22 | 10 231:23 | |

Sean P. Trende
September 02, 2022

251:25
264:12,13
**assumption**
107:13,17
131:13
228:24
229:1,9
267:13
**astray**
264:3
**athlete**
223:2
**Atlantic**
254:3,25
**atrocious**
196:3
**attempt**
90:16 125:17
163:17
199:16
256:24
**attempting**
13:15
**attempts**
64:24 200:14
**attend**
133:16
**attention**
99:9 131:4
**attorney**
151:12
156:21,22
208:19
**attorney-**
**client**
176:11
**attorneys**
208:22
**August**
115:12
**Austin**
267:2 268:25
275:23
276:4,24
277:2
**Austin/san**
136:4,22

**authored**
182:17
**authority**
50:23 51:12,
20
**authors**
101:14
117:17
182:23 183:1
**available**
12:18 13:24
34:23 45:25
76:6 79:24
123:18,19
147:9
**average**
164:3,13
183:18 198:2
**averages**
8:25
**avoid**
88:25
**avoiding**
245:13
247:14
**aware**
11:4 45:8
47:25 89:5
95:6,9,23
96:1,4,21
97:2,6 108:9
123:16
134:24
137:2,9,11,
19,21 138:23
154:22
165:2,9
179:14 189:3
211:23
213:24
**awful**
134:21 182:4
251:24

————————

**B**

————————

**Baby**

101:5
**back**
8:3 17:10
28:10 36:5
45:6 60:11
70:21 72:13
75:21 91:3
92:7 101:13
102:3,13
116:8 121:16
122:2 144:2
158:20
172:23
185:20 186:7
191:4 195:13
200:10
207:18
231:16 234:8
235:22
237:13 239:2
240:20 248:9
251:2 253:25
**backed**
101:17
**background**
265:24
**bad**
73:5 153:21
**balance**
168:25
174:10
**ball**
167:1
**ballot**
190:8,24
191:16 192:1
**ballots**
45:18
187:19,22
188:23 189:1
192:15 255:2
**Barack**
117:14,21
171:13
**barely**
66:24 67:10
**bars**

27:17,20
**base**
170:24
**based**
26:16 29:4,
16 63:22
66:19,20
69:2 77:23
80:11 88:5
138:16
159:22
192:21 210:7
212:5 219:1
220:25
221:15
225:21
226:2,12
266:17
**baseline**
58:9,24
**bases**
61:14
**basically**
18:10 24:24
159:1 263:12
276:22
**basis**
30:5 60:3
217:15
265:16
269:17
270:14
276:7,8
**battle**
230:8
**bear**
94:20 160:23
161:1,17,20,
25 162:1
206:19 262:2
**beard**
217:17,18
218:10
**bears**
161:12
**beating**
83:19

**beats**
  83:17,22
**Beaumont**
  276:16,17
**begin**
  96:15 127:12
  133:10
**beginning**
  37:11 118:13
  131:7 134:14
  159:24
  176:19,23
**begins**
  119:3 144:25
  177:6,25
**behalf**
  93:6 151:13
  210:21
**behavior**
  254:11,12
  255:14
**behind**
  37:17 124:20
  126:10
  214:18
**beings**
  34:8 118:4
**believe**
  11:3 14:12
  15:5 16:8
  28:25 37:5
  38:7 43:2
  49:24 56:14
  62:21 71:18
  76:12 77:10
  94:1 96:7
  97:12 98:16
  99:3,10
  102:14
  115:14
  117:19,24
  120:8,11,25
  121:7 128:17
  129:3 130:1
  132:5 139:25
  141:7 142:4,
  10,16,22
  143:2 146:14

  147:19
  154:25
  159:21 162:1
  164:14
  165:13,20
  167:5 171:12
  179:25 181:4
  183:23
  192:18 195:1
  196:10 204:1
  207:24 208:3
  210:19
  212:20 228:2
  248:19,23
  260:1 265:16
**believed**
  116:6
**believes**
  164:3
**Bell**
  247:22
  250:13,14,
  16,18,19
  252:16
**below**
  154:19 273:2
**Belt**
  73:8
**benchmark**
  229:15,20
  234:10
  251:13,25
  252:8
**bend**
  47:18 159:5
  240:22 241:6
  244:5,13,17,
  21 245:6,17,
  21 246:9
**benefits**
  13:20
**Benjy**
  115:21,22
  116:24
**Berra**
  47:10
**Besides**

  91:11
**best**
  16:14,21
  87:25 121:18
  141:1 181:15
  196:7 207:22
**better**
  41:2 49:1
  52:22 53:3
  58:25 64:13
  150:7 171:10
  216:19
  225:24,25
  226:17
  233:15
**Bexar**
  170:18 175:8
  185:17,25
**biases**
  19:16,18
**Biden**
  30:22,23
  31:6 41:20
  42:2,10,11
  43:10 68:14,
  20 69:9 71:6
  77:23 83:17,
  19,23 171:1,
  14 172:17
  173:7,18
  217:3,10
  221:2 223:3,
  14 230:19
  231:2,11
**Biden's**
  43:13 83:24
  173:12
**Biden/trump**
  19:9 238:20
**binary**
  121:12
**bit**
  12:22 76:1
  148:15 157:2
  215:19
**Bjorn**
  101:6

**black**
  27:17,21,24,
  25 29:12
  32:25 33:2,
  5,10 34:2
  35:11 39:21
  46:25 59:20
  229:20
  236:18
  248:1,5,7
**Blacks**
  46:21,22
**blank**
  191:11
**blind**
  17:4,8 40:9
  201:1,10,12,
  25
**blissfully**
  37:24
**block**
  78:14,23,25
  79:1,9,24
  80:20,24
**blocked**
  115:18
**blocks**
  78:7,10,15,
  19
**blue**
  39:21 63:23
  221:11
  236:13
  271:2,24
  272:4 273:9,
  10,12
**blurred**
  277:21
**board**
  160:3,8
  269:8
**Bonilla**
  206:10
**book**
  49:14,18
  97:25 98:19,
  22,25 99:4,

Sean P. Trende
September 02, 2022

24 100:19,20
101:3,15,22
117:17,21
118:2 119:3,
9,12
**border**
163:6,7,10
170:13,15
184:18,25
185:6
233:10,19
**border-**
**touching**
185:10
**bottom**
28:11 29:12
33:2,18 78:5
131:6 154:14
187:9 209:15
232:14
236:3,16
237:14
**bottom-right**
232:19
**bound**
46:24 47:2
265:21
**boundaries**
148:11 149:8
157:11
163:23
233:24 243:3
244:11,20
245:24 248:4
251:17
252:11,14
**boundary**
114:14
138:20
232:24 234:5
236:18
245:25
246:3,8,21
247:17
250:20
253:2,4
275:12,13

**bounds**
46:3,6,16,19
47:17,18,20
48:14,21
156:1,10
157:12
**boxplot**
26:11 34:7,
9,10
**boxplots**
26:9,14
**Brachman**
207:12,17,19
231:25 232:6
250:4,10
253:20,24
254:15,16,23
256:13 258:8
**Brazoria**
66:15 70:23,
24,25 73:11,
14
**Brazoria's**
72:21
**break**
45:1,3
75:14,15
90:25 91:23
105:14
133:18 135:6
143:2 149:25
193:10,11,12
207:13
**breakdown**
230:10
**breaking**
115:23
**brief**
258:17
**Briefly**
211:2
**bring**
39:7 100:1,
19,20
**bringing**
164:5

**broad**
8:23 45:13
132:8
**broader**
48:20 88:25
100:24
101:19
**Brooklyn**
201:17
**brought**
164:15
**build**
42:3
**built-in**
34:15
**bullet**
9:16 10:1
152:7
**bump**
215:18
**bunch**
18:5 42:13
61:15 86:20
**burn-in**
18:13
**burn-ins**
18:16
**Bush**
118:10 196:5
**butcher**
182:17
**butchering**
182:6
**Butler**
209:5
**buying**
159:11

---

C

---

**C-H-E-N**
13:18
**calculate**
62:24
**calculation**
9:1

**California**
140:5
**call**
12:13 13:16
15:10 26:12
27:18,19
51:15 59:12
159:5 224:4
236:3
**called**
11:4 13:3
18:21,23
46:17 82:14
98:20 147:13
256:6
**Callingwood**
209:25
**Callingwood's**
210:8
**Calls**
89:9 181:17
196:18 197:2
231:4 237:7
239:15 240:6
241:17
268:10,23
269:9
**candidate**
68:12,18,21
69:7,10
79:11
121:17,18
140:10
175:11 183:6
184:1 186:23
187:25 188:7
189:10,14,
19,25 191:2
194:5 196:9
197:9,20,21
198:17,19
205:4 206:15
222:17
226:3,6,8,13
255:25
256:20
257:13,23,25
258:2

candidates
  71:9 103:17
  104:12
  116:4,20
  124:1 132:13
  138:25
  180:20
  192:9,24
  193:25
  194:13
  196:16,23
  205:21
  223:11
  224:18
  228:3,23
  229:2 255:7
  257:2 258:4
  265:19
captions
  134:16
captures
  271:11
care
  105:23
  106:15
  107:12,16,21
cared
  107:23
career
  222:2
careful
  193:1
carefully
  126:12
Carl
  17:21
Carlo
  10:15 12:11
  13:17 18:4,7
Carmen
  59:10,13
  60:10 73:22
Carmine
  59:18
carried
  196:11
  222:22

carry
  222:22
carrying
  116:9
carves
  114:5 271:1
carving
  271:21
case
  14:22 20:23
  21:21 25:9
  34:8 37:24
  53:20 55:21
  56:12,24
  61:17 64:10,
  13 85:24
  88:13 90:19
  104:7 109:24
  110:20,22
  111:4,6,7
  120:2,10
  131:9 133:8
  137:18
  143:11
  145:18,22
  164:24
  165:14
  167:25
  168:1,15
  169:22
  179:17
  198:22 201:9
  202:17
  205:25
  206:3,4
  208:1,5,17
  209:3 210:3,
  18 211:19
  212:8,17
  214:7 215:22
  217:9 220:8,
  15,19,25
  233:5 248:22
cases
  51:16 64:3
  141:20
  143:14
  144:7,11,16

cast
  182:24
  187:19,22
  188:23 189:1
  191:10
  192:15
casually
  203:15
categorizatio
n
  145:5
Caucus
  258:16
CCES
  183:2,5
CD
  96:17 135:15
  137:15,17
  138:11 139:4
  188:13,15
  205:8,18
  206:4,10,19,
  25 207:2
  230:13,16,19
  231:1 233:19
  234:4,5,13,
  14,18,24,25
  235:5
  236:19,22,23
  237:1,5,15
  259:3,7
  260:2,7
  275:14,15
census
  78:7,10,23
  80:3,22,24
  81:6 194:13
center
  35:9 167:2
centered
  232:14
central
  9:3
certain
  12:25 13:25
  14:4,23,25
  20:19 25:6,
  20 26:1,2

  48:17 64:18
  89:5 102:10
  105:5 145:15
  151:8 153:14
  162:25
  205:18,20
  266:18,19
certainly
  51:8 57:22
  64:11 125:24
  139:6 182:1
  195:5 197:4
  200:22 233:2
  236:25 241:9
  264:22 265:5
certainty
  197:1
certified
  7:5
chain
  17:17,21,22
  18:4 22:17
chains
  18:11
challenge
  99:12 100:8
chance
  40:7 42:1
  277:6
chances
  197:19,20
change
  107:5 108:2
  126:1 150:4,
  11 172:18
  230:18
changed
  70:6 101:7
  250:3
changes
  103:25 105:4
  172:6,16
  174:13,17,20
  195:18
  206:19
  216:12 235:5
  238:17

Sean P. Trende
September 02, 2022

changing
  17:12
  117:15,22
  128:19
  132:19
  198:14
chapters
  119:11
characterizat
ion
  266:23
characters
  116:17
charts
  106:20
  169:18
  186:11
Chaudhuri
  7:7,9,21
  23:16 27:2
  45:6,7 62:6
  69:12,18
  75:18,21,22
  81:16,25
  82:17,20,23
  85:16 90:24
  91:3,4,20
  115:4
check
  15:22 193:9
  253:21
checked
  51:6 149:17
Chen
  13:17
children
  169:17,25
choice
  68:12,18,21
  69:7,10
  183:7
  189:14,19
  198:17,19
  206:15 230:7
  257:23
  258:1,2
choices

  254:3 275:25
  276:7
choropleth
  275:1
chose
  230:4
Chris
  181:5
Christi
  159:4
Christina
  151:25
  154:15
  158:16,17
  209:20
Circuit
  167:25
  168:15 268:2
circumstance
  109:23
  267:22
circumstances
  50:12 123:17
  229:7
circumstantia
l
  261:17,22
citation
  274:13
cite
  182:16,19
  183:9,25
citing
  195:16
citizen
  14:19 80:23
  106:9 158:11
  169:5,25
  170:1 205:11
citizens
  150:20
  169:11,16
city
  122:3
  165:22,24
civic
  62:17,22

claim
  41:4 63:19
  245:2,3
  247:14
claims
  90:15 243:21
clarification
  172:2 186:11
clarified
  186:20
clarifies
  172:12
clarify
  52:23 54:1
  91:7 211:5
clarifying
  186:18
classify
  8:9
clause/phrase
  106:13
clauses
  106:5
cleanly
  270:8,15
  275:9
clear
  120:1,7
  169:9 216:12
  218:10
clearly
  74:18 124:22
  214:20
  217:17
  230:24
client
  209:12
Clinton
  144:1
close
  20:21,24
  48:22 56:10,
  15 64:7
  87:24 124:19
  126:3,8,9
  196:12
  214:17

  219:25
  220:1,3
  224:4
closer
  150:12
closest
  255:20
clue
  135:24
  148:13,20
cluster
  27:13 60:10
clusters
  54:18 60:15
co-author
  255:5
co-authored
  254:7
co-counsel
  217:17
coalition
  67:11
Coast
  159:2
coastal
  159:5
code
  9:23 12:3
  14:8,10,13,
  16 15:7,22
  16:7 17:3,8,
  14 34:5,7
  70:20 77:25
  129:3 136:14
coding
  12:22
cohesion
  167:10,18
  168:24
cohesive
  167:5 168:3
  206:11
cohesively
  130:6,18,23
cohesiveness
  168:10

Sean P. Trende
September 02, 2022

collection
  66:25 235:23
Collins
  223:2
color
  81:18 82:21
  235:1 238:23
  240:25
  242:14
  249:12
  275:17
color-shaded
  251:3,18
colorblind
  236:9
colored
  244:8 245:20
  247:25
colorful
  59:9
coloring
  221:11
colors
  275:6
Columbus
  124:4,8
column
  27:25 28:23
  29:4,13
  33:1,3,11,15
  39:20,22
  186:18
  232:17
  246:14
columns
  27:19 40:1
Combating
  141:2
combination
  191:17 192:1
combines
  67:21
come
  8:3 28:10
  65:1 87:24
  92:7 94:20
  102:2 191:22

192:5 212:3
219:25 220:1
259:19 275:9
comes
  80:18 109:11
  250:22
comfortable
  235:20
comma
  178:4
command
  12:23 14:21
comment
  67:5,6,7
  172:3,18
commentary
  259:21,25
commenting
  94:23
comments
  248:25
Commission
  200:3
Committee
  207:20
committees
  248:25
common
  164:4,15
  165:22,25
  166:2,5
commonly
  55:7
communication
  176:11,12
communication
s
  179:18
communities
  60:17 61:4,
  12,13,25
  62:13,18,19
  66:4,8
  231:19
  232:25
  233:5,8
  235:1 238:23

249:12
community
  61:16,23
  62:4 166:13,
  22 167:1,8
  205:19
  206:11 233:4
  253:3,16
compact
  19:25 52:16
  53:9 54:17
  55:1,4,9,13
  56:17 57:6,
  23 58:10,14
  59:5,7 60:1,
  4 63:17
  64:17,20
  65:6,14,21
  71:4,12,15,
  25 72:9 74:7
  164:2,13
  166:14
  167:3,13
  201:2 202:1
compactness
  14:12 15:17,
  21 16:6,8,10
  22:6,7
  53:11,12,14
  54:2,20,21,
  23 55:7,12,
  14 56:5,19
  57:5,11,16,
  21 58:3,18
  62:10,24
  63:6 64:8,
  21,22 65:3,
  25 66:5
  67:4,6 68:23
  71:17,21
  73:10
  162:10,12,
  20,22 163:2,
  11,19,21
  165:10,17
  166:8,20,22
  167:5,9,16
  168:7,21

comparator
  57:3,16,17
  72:17,20
compare
  23:5 44:7,12
  72:6 84:22
compared
  21:16,20
  22:7 39:4
  42:19 44:4,9
  85:13 86:9
compares
  58:6
comparing
  23:2 44:20
  73:25
comparison
  75:6 84:25
compelling
  141:23
  142:18,24
  143:16,20
  144:12
compensate
  122:2
competing
  257:2
competition
  180:14,18
competitivene
ss
  43:2
compilation
  232:8
complete
  212:15
completed
  50:19
completely
  38:20 80:16
  107:6 110:9
  155:5 182:17
complex
  116:16
compliance
  200:14

comply
  163:17
  199:16
  200:18,23
component
  168:9
components
  62:13
composition
  84:2 124:22
  125:11,20,23
  126:18,23
  127:8,9,15,
  16 138:11
  148:17
  149:10
  152:24
  214:20
compositions
  125:2,25
  126:4,11
compound
  87:3 240:6
  269:23 270:7
  272:18
comprehensive
  212:15
comprise
  60:2 201:3
  202:2
computer
  9:23 10:25
  11:4
conceding
  110:8
concentration
s
  59:20 60:5,7
  61:2 239:13
concept
  13:11 49:9
  61:4 204:25
concepts
  35:6
concerned
  109:10

conclude
  64:19 72:8
  189:20
concluded
  29:16 183:20
concludes
  91:21
concluding
  206:19
conclusion
  88:4,24
  125:3 129:12
  134:6 144:3
  218:13 264:4
  266:16
conclusions
  67:17 88:8,
  17 128:5
  253:9
concoct
  142:2,11
conditional
  107:19
conduct
  11:21 22:18,
  20 45:24
  47:5 62:2
  72:21 73:24
  74:5 80:11
  83:4 91:7
conducted
  88:13
conducting
  63:13 73:2
  108:18
confidence
  9:1 13:22
  121:5
confident
  121:4,13
configuration
  134:6,25
  251:5,7
Congress
  200:13 215:3
congressional
  27:13 30:6

63:10 102:6
108:14
110:21
111:14
112:12
114:2,19
125:2,11,13
126:19
127:9,15
128:1 129:11
132:24
134:3,7,25
135:11,21
136:3 137:3,
23 138:24
140:11
147:11,23
148:9,18
149:1,11
151:14
170:20
173:2,24
177:18
179:14
183:3,13,18
184:8,11,14,
17,21,24
185:2,5,8
187:3,4,12
203:25
204:2,12
206:5 215:14
221:13
226:4,6,8
229:16,24
232:16,24
233:10
234:10
235:25
236:15
240:21 277:2
conjure
  67:14
connected
  60:17,22
connection
  20:6 177:10

consider
  60:21 86:21
  102:4 113:9,
  14 167:13
  171:15
  202:11
  212:22 220:3
  231:1 238:22
  249:4,5,23
  252:1
consideration
  71:5 73:15
  163:16
consideration
s
  86:13,14
  162:20
considered
  20:22,25
  28:7 54:17
  85:21 88:18
  113:1,5
  143:8 169:3
  213:7,14
  216:5 220:3
  227:1,8
  228:6,12
  244:25 245:4
  248:21
  250:12 270:5
considering
  270:1
considers
  162:12
  163:20
consistency
  138:18
consistent
  28:20 37:15
  58:21 88:11,
  22 89:2
  90:4,14,15
  102:11
  108:7,11,21
  109:13
  111:10
  124:23
  125:17

Sean P. Trende
September 02, 2022

126:15
127:4,20
133:24
136:13  171:5
172:25
186:17  207:5
214:21
218:23
225:18
227:12
233:25
238:16
240:17  247:2
249:17
252:24
253:18
262:15
263:17,25
267:16
269:21
270:2,12
275:25  276:8
**consistently**
 21:17 71:8
**constitute**
 63:17 65:14
**constitutes**
 67:1,12
 237:19
 239:23
**constitutiona
l**
 147:3 162:20
**constrained**
 48:13
**constraints**
 259:14
**construct**
 204:11
**constructed**
 260:21 261:6
**construction**
 9:13 212:12
 260:23
**Constructive**
 13:17
**consulting**

199:19,24
200:2
**contained**
 11:18 158:10
**contains**
 19:24 106:8
 114:2
**contents**
 160:21
**conterminous**
 162:23
**contest**
 36:24 187:14
 188:19
**contests**
 170:23
**context**
 49:25 50:1,2
 63:4,14
 99:25 100:24
 101:19
 106:17
 109:16
 116:24
 124:20 126:9
 134:20 144:5
 162:14,15
 163:3 214:18
**contexts**
 9:9 162:16
**contiguity**
 14:15
**contiguous**
 14:18
**contingency**
 101:23
**continuation**
 177:17
**continue**
 111:19
**continuing**
 121:15
**contrary**
 238:25
**control**
 13:1 16:15,
 21 17:1 20:8

24:13,20,23,
25 26:3,5
41:14 42:17
84:16 86:17
87:8,10,17
**controlled**
 24:2,6,16
 86:6
**controlling**
 25:3 35:18
 44:15 85:21
 87:12
**controversial**
 221:17,22
**conversations**
 208:22
**Convex**
 54:15 55:6
**convincing**
 142:2
**convoluted**
 59:2,4
**Cooperative**
 183:2
**copy**
 56:12 81:18
 82:18,21
 99:4,24
 101:1 115:14
 117:21 120:9
 139:25
 141:8,10
 146:16
 254:14,17
 275:16,17
**corner**
 54:8,9,11,12
 232:19
 242:13 244:7
 245:19
**corners**
 55:3 65:14,
 22 168:20
**Cornyn**
 116:9 190:11
 191:6,15,24
 196:10

**Corpus**
 159:4,8
**correct**
 10:20 15:20
 16:4 17:6
 19:10 22:19
 27:7,15
 29:3,15
 32:10 52:4,
 12 59:22
 66:12,17
 69:1 75:8
 77:6 94:3,7,
 13 99:3,18
 102:16
 118:22
 119:23
 120:18,19,
 23,24 130:13
 134:3 137:15
 146:16 148:9
 149:2
 151:11,21
 152:11
 153:7,16
 155:4 160:2,
 6 164:5
 165:14
 166:6,9,10
 169:7,8,12,
 13 170:9,21
 171:1,2,4
 173:21
 174:15 175:8
 179:5
 182:24,25
 183:3,4,7,8,
 10,11,14,15,
 22,23
 184:10,12,
 13,15,16,19,
 22,23,25
 185:1,3,6,
 11,12 186:6,
 17,24 188:17
 190:21,22
 191:4 192:6
 194:20
 196:13

200:25
204:3,7
208:2 209:25
210:1,4,15,
16 211:7
212:24 213:9
218:6 219:9
221:9,10,13,
14,22 222:2
223:20,21
224:1,6,10,
14,15,18
225:14,22
226:4,15,21
227:3,8
229:17,18,22
230:2,3,13,
14,16,17,20,
21,23 231:22
233:13
234:11,12,
16,17,20
235:1,3,7,8
237:17,20
238:3,4,7,8
239:14,23
240:4,13,23
241:15,25
243:5,15,23
244:1,22
245:8 246:24
247:8 248:23
249:1,4,7,9,
15,20,22
250:16 251:8
252:4,20
253:5 255:8
257:3 258:4
259:5
260:13,14
261:15,19,25
262:24
263:2,4,22
264:7
267:11,13
**correction**
224:9
**correctly**

152:1 214:23
218:17
264:12
**correlate**
35:20 41:13
108:23 109:3
**correlated**
36:18 40:5
42:9 84:1
87:6 102:15,
20,21 104:3,
17 105:8
264:18,25
265:4
**correlates**
105:23
106:23
107:11,20
216:21
227:14
**correlation**
38:4 104:5
107:3
264:13,22
265:5,6
267:6
**correspondenc
e**
225:17
**corresponding**
174:16
**cost**
58:16
**Council**
164:21,25
165:6,16
**counsel**
26:24 52:9
82:13,17
90:22,23
94:10,21
118:21
145:24,25
150:24 200:2
228:11
**counties**
134:19
182:7,11

192:12,22
**country**
28:25
**county**
114:1,3,6
148:9,19
149:20
166:2,4
170:18 175:8
185:17,25
190:4,9,13,
16,17,21
191:2,5,14,
24 192:16
206:12
223:25 228:7
240:22
242:11,19
243:13
247:22
250:13,16,19
252:16
259:16 267:2
271:2,12,22
272:23
273:5,11,12,
22,24 275:10
276:18,20
**county-level**
190:17
**couple**
9:8 25:1
71:2 151:8
209:10 254:1
**course**
151:22
176:18
209:18
215:15
219:18
**court**
40:16 53:19
56:4,8,9,23
61:9 72:23
73:4,7,17
74:21,25
98:13 135:1
137:5,14,22

139:12 146:6
155:16
156:6,23
157:17
163:14
168:1,5,14
180:21 198:4
203:19 204:9
206:8,18
207:7 231:25
256:3 268:3
**Court's**
207:9
**courts**
47:23 49:7
50:11 267:22
**cover**
13:23 98:18
144:16,20
**covered**
154:25
160:19
207:21
**cowrote**
254:25
**crazy**
201:16
**create**
30:1,2 31:2,
3 44:1 52:17
53:9 68:11
99:14 100:10
136:16
148:22
271:13
**created**
114:13
212:23
213:8,13,18
227:1,7
251:19
**creates**
43:8
**creating**
43:14,15
214:3
**creation**

Sean P. Trende
September 02, 2022

228:8
**creative**
59:9
**critical**
99:14 100:10
**critique**
52:2,7 66:19
68:4,7,22
69:2,5 70:4,
25 263:16
266:15
**critiqued**
63:11 66:7,
14 70:3
74:14
**critiques**
52:1 94:2,12
**critiquing**
67:20 70:15
**crop**
265:20
**crosses**
66:24 67:10
**crossover**
223:1
**crude**
89:18
**cultural**
62:12
167:10,18
168:10,24
265:24 266:6
**culturally**
167:4,22
168:3
**curious**
168:7 176:5,
24
**current**
198:3 266:7
267:24
**curse**
34:14
**cushion**
42:3
**cut**
231:18

234:25
**cutoff**
65:2 225:3
**cutoffs**
55:16
**CVAP**
14:19 15:2,
3,11 19:5
26:20 27:6
31:22,24
32:1,15,20,
22 33:23
35:1,4,13
48:16 67:2,
13 79:13,15,
16,20,23
80:6,11,13,
18 81:11,13
86:9,10
129:7 136:7
148:22
205:13
232:21 236:5
239:13 241:1
242:15,19,21
243:14
244:9,17
245:21,25
246:2,10,17
247:7 248:1,
5,8
**cycle**
261:12
263:18 277:4

--------

**D**

--------

**Dallas**
41:25 59:18
89:14 114:6,
16 132:15
134:19,23
203:9 223:25
265:14
271:2,12,22
272:22
273:5,11,12,
22,24 274:7

275:10
**Dallas/fort**
27:13 30:6
32:23 44:19
158:22
159:16
223:19 236:1
269:3
**Dallas/san**
203:4
**Dan**
51:17
**data**
9:6,12,13,
17,19,25
10:6,9,10
28:20 34:17,
23 38:2 41:1
43:4 45:15
46:9 48:18
66:20 76:6,
7,10 77:3,4
79:7,8
80:18,25
81:8,14
133:23
147:2,6,10
149:14 161:7
165:16
175:23 183:1
212:11
213:12
268:18
**Data's**
147:5,6,8
**datasets**
77:9 212:12
**date**
139:22
**dated**
115:11 120:2
146:10
**dates**
261:2
**Daubert**
49:24
**day**

40:19 56:22
64:25 203:20
247:18
**day-to-day**
8:25 9:5
**days**
133:1 143:25
**deal**
77:13,21
100:14
**dealing**
70:23
**deals**
132:23
**dealt**
260:16
261:14
**debate**
252:25
**debating**
249:6
**decade**
42:3 95:3
135:2 137:21
189:13 206:2
218:16
**December**
139:23
146:11
258:23
**decide**
16:5 35:23
37:2,4 92:3
113:14
**decided**
219:4
**decision**
52:22 53:3,
19 137:8,14,
19 142:5
167:23
204:9,14
**decision-
makers**
142:5,11,17,
22 143:5

Sean P. Trende
September 02, 2022

decision-
making
  143:9
decisions
  142:12,17,23
  143:6
decrease
  84:6
decreasing
  120:21
  121:1,8
  197:20
  198:18
dedicated
  135:11
Deep
  89:16
default
  17:12,13
Defendants
  151:13
define
  19:19 20:7
  61:20 215:21
defines
  61:25
definition
  22:16 54:16
  57:23 144:9
  162:24
  214:25 215:5
  239:21
degree
  13:22 103:1
  104:5 169:1
  194:21
  195:9,22
  265:5
degrees
  163:11
Delegates
  200:13
Delta
  201:13
Democrat
  46:11,12,15
  69:11 96:9

140:11
181:10
186:20
189:19 194:5
257:22
Democrat-
leaning
  44:6
democratic
  19:8 27:9
  28:5 31:10,
  15 39:8 71:9
  95:16,20
  96:11,14,17
  97:17
  101:12,14
  102:24
  103:8,17
  104:12 114:3
  116:4 117:5
  118:19
  122:6,11,18
  123:3,6
  124:1,7,9
  131:15,21
  132:13
  138:25 139:4
  147:15
  171:22,24
  172:7,17,20
  173:5,18
  174:10
  195:4,5
  198:11
  228:23
  229:12
  257:21
  265:15
  266:14,18
  267:1,4
  269:2
Democrats
  46:24 95:4,
  14,17 96:12
  97:14,19,20
  103:22
  104:25
  120:18

122:23 130:3
132:21
215:13,14
223:4
demographic
  101:25
  230:10
  261:10
demographics
  47:6 107:1
  230:15
  234:19,22
  238:5,6,13
  263:1 271:18
  272:16
demonstrate
  25:10 46:22
  53:8 63:16
  125:16 127:3
  128:12
demonstrates
  124:22
  214:20
demonstrating
  9:3 52:15
  59:6
demonstration
  52:1,3,10
  57:17 59:3
  66:6,11,14
  68:6,7,24
  70:10,24
  71:8,10
  73:21 74:13
  75:7 154:18
demonstrative
  211:18
  212:1,7
Denton-wise
  66:15,18,24
  67:20 73:23
  75:4
depend
  85:19 86:16
  122:11
  123:22
  131:20
  166:20,23

203:3 229:7
dependent
  88:25
depending
  103:3,9
depends
  102:22
  122:2,25
  124:10
  131:24
  167:17
  255:18
  267:20
depicted
  251:8
deposed
  7:11
deposes
  7:5
deposition
  83:16 150:3
  151:5,7
  168:18
  259:11
  277:21
describe
  8:5 45:11
  48:3 95:19
  96:16 151:12
  203:1 204:1
  271:13
described
  158:1 178:20
  254:10
  256:14,18
  257:11
describes
  65:5
describing
  168:2
description
  154:4 212:15
  234:13
descriptive
  8:24
desired
  89:7

Sean P. Trende
September 02, 2022

detail
  116:13 251:1
determine
  24:15 87:7
  111:23 126:2
  187:18,21,24
  188:22,25
  189:9
determining
  58:9
developed
  10:15 46:2
  63:3
development
  266:13
develops
  64:10
deviates
  105:21
  106:18
deviations
  23:5
DFW
  74:18 95:21,
  23 96:2,5,8
  103:17,21
  129:20,24
  130:3,10
  132:12,24
  134:2,6,25
  149:1,10,15
  273:3,21
differ
  254:11
difference
  15:12 33:19
  54:20 80:5
  225:8,10,13
different
  16:2 18:6,
  18,25 27:9
  45:21 55:3
  56:24 61:12,
  13,14,19,20
  65:14 79:4,
  17 81:9,13,
  15 107:2

157:3 163:15
186:10
187:16
226:18
251:4,6,12,
14 256:17
261:2
differently
  131:11 132:1
difficult
  35:21 88:3
  93:12 108:24
  109:3 147:25
  197:4
dilemma
  155:6
dilute
  229:3
direct
  88:14 144:23
  152:22 154:3
  160:24
  177:23
directly
  10:10 61:21
  94:4,8,14,
  17,24 108:10
  152:20
  153:11,12
  155:13
  160:23
  202:20
  260:12
  262:1,3
disagree
  10:18 11:7,
  11 72:23
  146:15,17
  266:25
disagreeable
  274:18
disbelieve
  165:20
discard
  25:19,23
disclaimed
  20:4

disclosed
  199:24,25
discover
  10:4
discovery
  85:23 108:8
  248:22
discrepancy
  80:12
discretion
  64:19,23
  65:3,11,23
discriminatio
n
  135:1 204:11
  205:18
  206:20
discriminator
y
  137:5
discuss
  68:6 135:15
  138:10 147:3
  160:20
  175:25
  199:21
  208:5,11,17
  209:3 255:5
discussed
  83:15 96:19
  133:22 238:2
  253:1 271:9
discussing
  145:15
  223:18
discussion
  101:21
  134:14
  138:19
  152:18
  177:11 179:6
  186:7,12,13
  194:11 200:9
  206:25
discussions
  88:6 182:1
  208:24

disentangle
  110:22
dismayed
  34:14
dismiss
  99:12 100:7
disparate
  152:11
dispersal
  166:21,23
  167:17
  168:9,24
dispersed
  55:11
  167:11,22
  168:2,19
dispersement
  60:20
dispute
  23:8,14,21
  102:25
  196:5,7
disputing
  38:2
dissimilar
  167:22
distinct
  60:15 159:3
  198:25
distributed
  272:14
distributing
  272:11
distribution
  13:4,12,14,
  19,23 14:1,
  2,6 16:18
  20:8 21:6,8,
  14,24,25
  23:6 29:7
  33:7,16,19,
  22,24 34:3
  35:9,14 36:1
  38:21,23
  40:3 257:2
  258:3

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **district** | 138:3,5,8,9, | 22,25 238:3, | 44:2,18 |
| 25:12 28:16, | 20,24 140:11 | 12 239:4,12, | 48:5,25 |
| 22 29:1,5 | 148:9,18,23 | 14 240:3,21 | 54:19 55:13 |
| 30:1,13,17, | 149:1,4,6, | 241:12 | 57:6,18,23 |
| 18,20,21,22, | 11,12,15,20, | 242:23 | 58:13,25 |
| 23 31:10,24 | 23 159:19,22 | 243:3,15 | 59:5 60:8 |
| 32:2,16,19, | 163:5,6,12 | 245:7,24 | 63:3,10 |
| 22 35:1 | 164:1,2,4,5, | 246:3,8,22 | 66:9,11,15 |
| 39:10,12,16 | 13,15 166:17 | 247:7,16 | 68:17 70:3, |
| 40:8 41:18, | 167:2 | 248:4,14 | 25 71:1,4 |
| 21,25 42:2, | 171:12,14 | 250:15,21 | 72:1,2,8,10, |
| 9,10 43:15, | 172:3,7,8,19 | 252:2,11,14, | 22 73:21,23, |
| 16 46:9 | 173:2,4,7,9, | 23 253:2 | 24,25 74:1, |
| 52:17 53:5, | 24 174:10, | 260:2,3 | 6,9,13,18 |
| 7,10,23,24 | 13,17,20,22, | 269:2 | 75:1,7 77:13 |
| 54:3,7,9,10, | 25 175:4,7, | 270:14,20, | 78:19 83:17, |
| 12,14,20,23, | 12 183:13,18 | 23,24 271:1, | 18,21,22 |
| 25 55:8 | 184:8,11,14, | 10 272:4,24 | 84:2,17 |
| 57:24 58:9 | 17,21,24 | 273:4 274:4 | 85:5,6,8,10 |
| 59:4,5,10, | 185:2,5,8, | 275:10 | 86:3,8,9 |
| 13,18,21 | 16,25 186:1, | 276:7,10,12, | 87:12,21 |
| 60:1,2,4,6, | 5,14 187:3, | 13,14,18,19, | 89:6,13 91:9 |
| 18 62:7,19, | 5,12,16 | 21 | 102:6 106:8 |
| 25 63:15,18, | 189:4 193:4, | **district's** | 107:4 110:3, |
| 22 64:22 | 5 194:25 | 58:23 126:22 | 7,8,10,11, |
| 65:6,14 | 197:16,18 | 166:8 172:16 | 14,16,21 |
| 66:6,23 | 198:2,5,7 | 235:25 244:4 | 111:1,14 |
| 67:10,20 | 201:3,12,15, | **district-wide** | 112:4,17 |
| 68:11,14,17, | 17,19,24 | 76:7,10,12 | 114:6,8,15 |
| 20 69:3,4,6, | 202:2,12 | 77:3 | 124:20,21,23 |
| 9 71:3,6,8, | 204:1,2,9,12 | **districting** | 125:3,4,11, |
| 11,12,15,21, | 206:5,12,13, | 18:8 69:22 | 21 126:1,10 |
| 23,24 72:7, | 14 215:6,21, | 113:6 | 127:9,15,22 |
| 9,22 73:23 | 25 216:3 | **districts** | 132:24 |
| 74:7 78:17, | 217:19 218:1 | 14:18,23,25 | 134:3,10,13, |
| 24 86:10 | 219:5,21 | 22:9 24:12, | 14,22 136:4 |
| 87:25 89:17 | 220:4 225:20 | 14,17 25:6, | 138:17 |
| 91:12 107:5 | 226:1,4,6,12 | 14 27:13 | 146:20,21 |
| 110:9 112:12 | 227:13 | 29:24 30:7, | 147:3,11,23 |
| 113:4,21,23 | 229:10,17,25 | 9,11,15 | 148:4 151:15 |
| 114:2,4,14, | 230:1,23 | 31:3,22 | 154:18 157:4 |
| 19 121:24,25 | 231:15 | 32:24 38:19 | 158:10 |
| 122:7,9,19, | 232:25 | 39:8,14 | 159:15 160:8 |
| 22,23 123:4, | 233:10,13, | 40:6,20,21, | 161:6 |
| 10 124:9 | 20,24 | 23 41:6,9, | 162:11,12 |
| 126:17,19,25 | 234:10,15 | 10,16 42:5, | 163:19 |
| 134:7,18,22 | 235:6,15,20 | 14 43:9,10, | 165:17 |
| 135:11,22 | 236:15 | 17,20,25 | 170:17,18,20 |
| 137:4,23 | 237:2,4,15, | | 171:5,11,17 |

|                  | divide          | 191:5,14,25     | draft           |
|------------------|-----------------|-----------------|-----------------|
| 172:24           | 221:2 231:18    | 195:16          | 212:22 213:7    |
| 177:18           | 233:4,8,17      | 215:25          | 256:6           |
| 179:14           | 235:1 236:22    | 216:13 217:4    | drafted         |
| 183:25           | 237:5 241:5     | dot             | 98:25 115:9     |
| 184:3,7          | 242:19          | 27:21,24        | 120:4 139:16    |
| 185:10           | 244:13          | 28:1 29:12      | 141:5 146:12    |
| 186:10           | divided         | 32:25 33:2,     | drafting        |
| 189:12,20        | 65:22 206:11    | 5,10,15 34:2    | 103:11,14       |
| 195:3,8          | 233:16          | 35:11 39:21     | 135:20          |
| 196:14 197:8     | 238:23          | 129:1,2         | 139:17          |
| 214:18,19,21     | 249:12          | 136:9 153:13    | draw            |
| 215:11,12        | divides         | dotplot         | 16:24 17:1      |
| 216:1,12         | 232:25          | 26:15,16,19     | 24:11 41:19,    |
| 217:3,4,9,       | 245:25          | 34:20 35:10     | 24 44:14        |
| 10,11 218:4,     | 246:8,16        | 60:6 129:19,    | 60:8 67:17      |
| 15 219:15,       | 248:4,14        | 22 130:10       | 88:11 89:7,     |
| 16,22,24         | dividing        | 136:2,16,24     | 15 110:3        |
| 220:16           | 78:6 241:24     | 154:4 166:11    | 111:11          |
| 223:4,5,19       | 252:14          | dotplots        | 127:4,21        |
| 224:17,21,25     | divisions       | 19:3 26:7,8,    | 129:10          |
| 225:25           | 240:10          | 13 34:15        | 137:18          |
| 228:7,19         | document        | 36:6,13         | 146:20          |
| 229:8 232:16     | 69:19,25        | 128:12          | 147:3,13,22     |
| 239:5,11         | 81:17,19        | 129:4,8         | 148:3 163:6,    |
| 240:1,8          | 82:1 146:8      | 152:23          | 9 164:8,10,     |
| 241:4,24         | documents       | 153:19,23       | 12 196:14       |
| 242:10,18        | 181:13          | 156:13          | 201:1,12,14,    |
| 243:5,13         | doing           | 157:4,10        | 17,18,23,25     |
| 244:12           | 11:19 17:2      | 158:2 161:3,    | 215:16          |
| 245:6,17         | 25:4,5 48:22    | 11,22 162:5     | 233:22,23       |
| 247:22           | 53:2 89:18      | 169:5,16        | 252:14          |
| 251:5,7          | 147:18          | dots            | 259:3,12        |
| 260:21,23        | 148:16          | 27:17 33:12     | 269:1           |
| 261:11           | 166:17 182:7    | 63:23 136:1     | drawer          |
| 263:2,8          | 201:11,15       | 169:9,18        | 227:1 268:7,    |
| 269:3,7          | 207:4 215:15    | double-blind    | 13,19           |
| 271:3,12         | 227:12          | 49:14           | drawers         |
| 272:23           | 255:11          | doubt           | 88:6 105:23     |
| 273:20           | Donald          | 119:15          | 106:15,23       |
| 275:23           | 28:23 30:9,     | 135:17,18       | 107:2,7,10,     |
| 276:4,25         | 12,13,16,18,    | 165:15          | 12,16,21        |
| 277:2            | 24 31:4,6,7     | 217:22          | 108:16          |
| dive             | 39:15 40:24     | Doug            | 114:13          |
| 7:14             | 41:10,20        | 180:22          | 129:10          |
| diverge          | 42:6 80:22      | downtown        | 213:8,13,18     |
| 264:15           | 81:5 87:12      | 114:16 124:6    | 214:2 227:7,    |
| diverse          | 190:4,20        | 132:16          | 11 230:4        |
| 89:13            |                 |                 |                 |

Sean P. Trende
September 02, 2022

263:7
**drawing**
  16:16 21:4,
  10,14 32:20
  40:9 90:4
  106:24 110:5
  113:6 123:13
  147:10
  149:14
  162:19
  163:5,12
  197:7,18
  201:10,12
  202:11
  227:17 259:2
  269:1,17
**drawn**
  14:23 31:1,2
  38:21 58:21
  84:4 87:15,
  22 102:6
  110:7 111:10
  113:21
  124:23
  125:4,17
  137:4 171:5,
  18 172:25
  177:13,18
  179:8 204:2
  213:8 214:21
  218:14
  240:17
  253:5,14
  269:16
  270:20
  272:25
  276:11,13
**draws**
  18:18,19,21,
  23 19:7
  47:15,16
**drew**
  21:6,9 85:11
  108:13
  147:14
  148:8,12,25
  149:20
  180:3,11

181:8,15
214:8 233:25
**drive**
  142:1 194:17
**driven**
  194:12
**drives**
  194:10
**driving**
  37:17
**dropoff**
  140:4
**drops**
  84:7
**drove**
  86:13 88:5
**Drs**
  53:2 154:20
**drugs**
  93:12
**Ds**
  140:5
**Duchin**
  9:20 10:25
  11:8,12
  17:1,7
  21:11,15
  32:24 38:3
  53:2 58:4,7
  68:20 69:24
  70:5 74:20
  82:5 83:9
  87:11
  134:10,11
  151:24
  154:20
  159:21
  209:20 213:4
  261:3,7
**Duchin's**
  9:22 10:6,
  14,24 23:2,
  9,14 26:9,13
  31:20 32:19
  36:22 52:1,
  3,7 58:5
  66:14,21

68:24 70:23
72:6,9 73:19
74:7 82:24
83:5 84:12,
13 85:11
91:9 130:15
134:16,17
136:20
**due**
  141:22
  143:15 261:2
**Duke**
  141:4
**duly**
  7:4
**durable**
  215:18

---

**E**

---

**earlier**
  13:15 15:20
  50:8 56:18
  71:24 72:2,
  12 83:16
  102:14
  108:22 130:2
  133:23
  166:18
  168:17 169:4
  207:24
  239:22
  248:19 271:9
  277:1
**early**
  101:6 133:14
**easier**
  11:2
**east**
  132:16
  158:25
  159:1,4
  233:12 246:2
**eastern**
  163:9 250:20
**easy**
  89:6 146:19

147:22
**ecological**
  45:9,12
  46:5,17
  47:4,14,16,
  17,22 48:9
  182:23
  193:22
  194:2,3
  199:7
**editing**
  119:9 139:18
**editor**
  51:7,8
**editors**
  51:4 256:7
**Education**
  160:4,8
**effect**
  84:1 89:7
  109:2 113:22
  114:13,14,20
  134:18
  138:18
  141:25
  157:19
  192:22
  230:18
  270:20,21
**effectively**
  16:18 64:23
  65:24 196:20
**effectiveness**
  69:3,23 91:8
**effects**
  114:23,24
  276:11,17
**efficient**
  150:25
  207:23
  272:12,15
**effort**
  173:4,16
**EI**
  47:21
**eight**
  111:18

Sean P. Trende
September 02, 2022

277:20
**either**
40:24 56:23
181:9
191:16,25
192:19
193:22,24
237:11
262:22
**El**
96:22,25
104:3,9,11,
15 184:18
185:9 203:18
**elaborate**
38:17
**elect**
68:12,18,21
69:6,9 71:9
110:16,21
188:15
196:25
198:17,19
205:3 257:22
**electable**
257:22
**elected**
171:15 186:2
187:5,15
**electing**
185:16
206:15
**election**
19:9 50:20
51:4,20,24
76:6,7,10
77:2,3,4
103:4
117:15,22
140:4 147:13
170:23,25
175:4,10,11,
18 178:10,
11,15 181:25
183:3
185:13,17
186:3,4,19,
21,24

187:12,13,
19,22,25
188:4,13,16,
19,21,23
189:1,4,10,
17 190:5,16
193:4,6
197:8,19,21
205:2 215:14
221:3,7,9,13
225:22 228:6
254:6,12
255:7,15,20,
23 256:1,20
**elections**
8:11 43:1,2,
5 44:21
45:15,17
51:13 105:4
171:11 182:2
192:9 223:23
254:4 256:16
**electoral**
263:7
**electorate**
100:5 120:21
121:2,8
**eliminated**
65:24
**Ellum**
89:16
**else's**
119:4
**emerging**
101:14
171:6,8,16,
19 173:1,16
177:19
**emphasis**
127:21
**empty**
78:15
**enacted**
25:16,17
27:22 29:5,
23 30:19
31:21 33:6
35:3,10,13

36:1,6,8
37:18 38:20,
23 39:4 41:8
42:19 44:1,
3,7,8,12,15,
16,20 57:2,
5,15,18
58:6,8,13
72:16,19
74:1 85:12
86:10 102:7
105:21
106:7,18,25
125:12 128:1
130:12
151:15 160:3
162:11
163:19 164:1
213:8,13,18
214:3,8
218:3,14
221:1 227:1,
7,18 228:8
229:16,19
231:18
232:17
234:11,25
235:25
238:22,23
240:21
242:11
244:4,12
245:17
246:23
247:22
249:20 251:8
253:2 267:15
**enclosed**
110:10
**end**
40:18 42:2
56:21 64:25
90:25 91:5
145:6 168:4
174:13,17,
20,25
176:19,21,23
177:4,5

189:13
218:16 269:2
**endeavored**
262:4,12,20
**ends**
177:7
**enforce**
145:4
**engaged**
133:11,13
161:8 257:8
**engagement**
62:17,23
151:11
160:25
209:16
**English**
98:19
**enhance**
172:7
**enhanced**
172:17
**Enos's**
94:13,16,20
**ensemble**
12:14 19:13
21:6,9,11,14
23:22 25:25
26:1,21
27:6,10 28:4
29:10 33:17,
25 37:6
38:11,22
39:4,9,19
41:6,14
42:17 84:4,
7,10,12,13,
17 85:4,6,
11,20 86:17
87:22,23
88:2 105:22
106:10,25
107:1
**ensembles**
11:1,13
18:22,23,24
19:4,11 23:9

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 24:24 25:14, | 21 78:1 | 261:17,22 | **exception** |
| 16 26:17 | 80:1,2,4,19, | 263:6,16,24 | 134:21 |
| 30:8,25 34:6 | 20 | 266:17 | **excerpt** |
| 40:11,18 | **estimated** | 270:24 | 117:21 |
| 44:13 87:7 | 38:7 | 271:19 | **excess** |
| **ensure** | **estimates** | **evidences** | 29:24 30:14, |
| 20:18 21:5,9 | 47:9 184:4 | 175:19 | 16 31:4 |
| 25:4 47:19 | 260:9 | **exact** | 39:15 47:9 |
| 205:20 | **estimating** | 108:5 109:1 | 48:6 241:10 |
| **ensures** | 80:21 | 233:19 239:4 | 242:21 |
| 16:17 | **estimation** | **exactly** | 244:17 |
| **ensuring** | 79:25 | 61:11 108:19 | **exchange** |
| 205:20 | **eval** | 138:21 | 203:24 |
| **entertaining** | 62:2 | 161:15 196:6 | 230:12 |
| 147:20 | **evaluate** | 201:22 | **exclude** |
| **entertainment** | 43:1 62:12 | 202:23 217:1 | 169:21 |
| 147:18 | 66:5 88:1 | 225:3 271:4, | **excluded** |
| 148:6,21 | 151:14 | 6 | 110:25 |
| **entire** | 152:14,25 | **examination** | 169:10 |
| 13:23 37:23 | 166:7,13 | 7:6 93:3 | **excluding** |
| 106:17 108:8 | 225:19 | 124:19 125:1 | 185:8 |
| 144:4,5 | 231:21 | 126:4,8,9 | **exercise** |
| 206:2 217:19 | **evaluates** | 127:1 150:16 | 201:9 |
| **entirely** | 44:21 | 207:16 | **exhibit** |
| 78:19 148:6 | **evaluating** | 214:17 | 7:16,18,22 |
| **entitled** | 12:14 43:5 | 238:17 | 69:13,15 |
| 120:9 | 158:22 | 258:11 | 81:17,20,22 |
| **envision** | **evaluation** | **examine** | 95:1 98:9, |
| 198:13 | 62:3 | 114:23,24 | 14,16,17 |
| **equal** | **evaluations** | 152:16 190:7 | 99:3 113:17 |
| 48:10 144:8 | 157:5 | 269:15 | 115:1,6 |
| 206:21 252:3 | **event** | **examined** | 117:9,20 |
| **equally** | 59:6 | 110:16 127:8 | 119:2,18,23 |
| 65:22 | **everybody** | 152:17 | 139:8,13 |
| **error** | 92:8 | 276:25 | 140:19 |
| 22:18,21,25 | **everyone** | **examining** | 146:2,7 |
| 48:13,21 | 8:24 138:8 | 110:10 | 151:2 209:14 |
| **errors** | **evidence** | 125:12 | 212:10 |
| 77:8 | 40:10,11,15 | 127:25 | 214:15 |
| **essay** | 41:4 69:6 | 153:1,4 | 232:1,3 |
| 119:4 | 89:25 97:10 | 275:23 | 234:9 235:22 |
| **essentially** | 169:21 | **examples** | 237:13 239:2 |
| 22:1 263:15 | 175:12 | 61:16 113:25 | 240:19 |
| **established** | 181:22 189:6 | 114:1,18 | 242:8,9 |
| 65:12 269:21 | 192:7 205:23 | 239:1 271:8 | 244:2 245:15 |
| **estimate** | 248:21 | **excellent** | 247:20 |
| 76:23 77:15, | 258:22 | 53:16,17 | 250:4,7 |
| | | 191:12 | 251:2,6,12, |

13,18 252:3,
11 254:14,
20,24 256:12
258:22
**exist**
39:18 245:11
**existed**
144:22
253:17
**exists**
77:10 143:8
271:10
**exit**
45:24 116:9
195:19
196:11
**expect**
30:2 31:2,12
40:20 89:18
105:22
106:25
107:19
130:4,8
231:1 254:4,
5 255:15
**expected**
101:12
215:20 219:3
255:6
**expects**
31:23
**experience**
34:7 43:5
69:8 123:15
132:15 182:1
**expert**
7:25 8:9
37:5 44:24
48:25 50:1
58:15 102:10
103:12,13
109:17 128:6
151:23
160:21 161:2
199:19,20
208:4,16
209:2,19,23
210:2,13,17,

21 211:1,6
212:6 232:8
260:10
**expert's**
73:2
**expertise**
8:6,7 51:24
**experts**
104:7,20
199:24 200:2
210:23
**explain**
57:14 61:23
67:7 78:9
128:25
143:12 271:4
**explained**
60:8
**explanation**
24:21 25:11
41:2 141:24
143:17,21
275:25
**explanations**
24:19 102:5
192:5
**expletive**
34:10,13
**explore**
167:7
**exponent**
16:9
**extending**
273:4
**extends**
273:21
**extension**
261:7
**extent**
11:16,19
24:3 71:5,22
95:15 96:10
97:16 144:21
225:19
239:19,20
241:12
242:23

249:11
256:23
261:21
276:12
**extraordinari
ly**
59:2
**extreme**
27:25 29:6
33:6,16,21,
25 35:3 44:8
85:13
**extremely**
57:19 87:24
**extremes**
42:21
**extremities**
54:19
**eye**
205:2
**eyeball**
34:19
**eyeballing**
63:23
**eyes**
34:9 232:12

_____

F
_____

**Face**
117:15,23
**faced**
110:12
**fact**
13:24 37:23
38:14 85:23
88:12 90:13
106:2 108:8
113:20
126:23
146:15
161:18 204:8
225:5 246:8
248:22 253:1
265:2 270:19
**factor**
16:25 24:16

40:12 49:21
87:7 95:13
112:9,22,24
144:11
204:21
268:9,15,21
269:19
270:10,16
**factors**
14:10 16:15,
22 49:24
85:21 86:18
125:12 128:4
261:25
262:2,16,22,
23
**facts**
97:10 169:20
189:6 205:22
266:6
**fail**
75:1
**failed**
222:22
**fair**
23:8,13 29:4
70:9 103:1
127:13
135:14 140:9
153:4,8,17,
22 154:5
160:20
161:10 162:4
166:12
172:23 186:3
193:21
206:24
207:19
210:7,10,22
211:19
212:2,5,8
213:5 217:25
219:1 220:24
222:14 223:9
224:20 233:9
236:21 237:4
238:9,19
246:15

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 249:10 | **field** | **filter** | 274:3,21 |
| 250:19 254:9 | 8:5,16 50:23 | 25:23 39:13 | **fit** |
| 261:24 | 51:12,20,24 | **filters** | 225:12 |
| 265:5,19 | 79:5 247:18 | 214:2 | **five** |
| 266:15 | **fifth** | **final** | 75:18 195:10 |
| 267:14 | 120:13,14 | 57:8 249:19 | **flatly** |
| **Fairfax** | 167:25 | 250:2 257:5 | 33:24 |
| 211:1 232:9 | 168:15 268:2 | **finally** | **fleshed** |
| **Fairfax's** | **fight** | 71:10 189:23 | 168:1 |
| 211:6,13 | 37:3 56:22 | **find** | **flip** |
| **fairly** | 129:16 | 34:16 85:12 | 217:10 |
| 64:16 237:23 | **figure** | 86:7 106:10 | 240:20 248:9 |
| **fall** | 26:15,16,24 | 277:24 | 273:1 274:1 |
| 38:20 87:22 | 27:3,5,8,16 | **finding** | **flipped** |
| **falls** | 28:5,15 29:2 | 82:21 135:1 | 186:11,20 |
| 36:1 99:16 | 31:17 32:3 | **findings** | **Flores** |
| 100:12 | 33:1 36:7,9, | 36:25 137:13 | 188:20 |
| **false** | 11 38:24,25 | **fine** | 189:24 |
| 93:17 | 39:21 59:19 | 193:11 | **Florida** |
| **familiar** | 61:11 64:16 | **finish** | 140:6 |
| 13:11 17:17 | 65:13 76:25 | 74:23 75:11 | **focus** |
| 49:9 50:20 | 108:19,20 | 144:19 | 8:10 70:22 |
| 51:3,10,17, | 128:15,23 | **firm** | **focused** |
| 18,21 61:3 | 129:1,19,23 | 209:4,8 | 63:2 82:21 |
| 164:20 | 136:2,17,24 | **first** | 209:15 |
| 203:1,4 | 172:5,10,13 | 7:4,10,16 | 238:18 |
| 204:8 206:2 | 174:12,16, | 22:5 28:18 | **focuses** |
| **familiarity** | 21,22 221:7, | 31:18 43:8 | 127:14 183:9 |
| 203:3 | 8,18,22 | 46:3 52:23 | **focusing** |
| **family** | 229:15 | 53:7 71:3, | 18:17 216:17 |
| 12:13 | 231:17 234:9 | 13,14 75:4 | **follow** |
| **famously** | 238:19 | 76:5 99:9 | 32:8 258:20 |
| 55:17 | 273:2,3 | 101:11 | **followed** |
| **far** | 275:2 277:13 | 106:5,19 | 247:17 |
| 88:2 150:4,7 | **figured** | 113:18 118:3 | **following** |
| 151:1 159:6 | 258:19 | 124:16,18 | 237:24 |
| 200:6 226:23 | **figures** | 126:5 128:11 | **follows** |
| **fashion** | 27:14 59:15, | 133:7,11,14 | 7:5 |
| 81:3 | 16,19 106:20 | 141:17 | **followup** |
| **favor** | 172:4 221:1 | 146:10 | 203:24 |
| 194:15 | **figuring** | 151:11 178:3 | **force** |
| **feature** | 81:10 | 180:19 | 37:17 |
| 34:15 | **files** | 207:25 | **foreclose** |
| **features** | 11:13,14,17, | 214:16 | 161:21 |
| 38:10 43:20 | 21 | 218:13 | **forgot** |
| **federal** | **fill** | 222:24 | 39:7 |
| 93:17 162:21 | 169:17 | 229:25 232:9 | |
| | | 260:15 | |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **forgotten** | 110:23 111:5 | 196:18 | 265:9 266:2, |
| 98:19 | 112:14,25 | 197:12,23 | 10,21 267:8, |
| **form** | 113:7,12 | 198:21 | 18,25 268:22 |
| 8:17,21 10:7 | 114:10,21 | 200:21 201:4 | 271:25 |
| 11:9 14:11 | 116:5,21 | 203:2 | **formally** |
| 15:18 16:3 | 121:10 | 204:13,19,23 | 133:13 208:1 |
| 18:1,4 19:22 | 122:1,10,16, | 205:5 207:3 | **formation** |
| 20:2,13 21:1 | 24 123:9,14, | 208:8,14,20 | 252:2 |
| 22:2,23 | 21 124:2 | 209:6 | **formed** |
| 23:10,15,24 | 125:6,14 | 211:14,20 | 61:13 |
| 24:9 26:23 | 126:7,20 | 212:18,25 | **forming** |
| 28:8 29:8, | 127:10 128:3 | 213:10,15,20 | 212:16 |
| 14,19 33:8, | 129:14 | 214:4,10 | **formulate** |
| 14,20 35:5, | 130:7,14,20, | 215:7,23 | 262:4 |
| 17 36:3,10, | 25 131:19,23 | 216:9,23 | **formulated** |
| 16 37:10,19 | 132:3 134:8 | 218:7 219:6 | 277:10,18 |
| 38:6,12 | 135:3,12,23 | 220:5,11,22 | **Fort** |
| 39:23 40:14 | 137:6,16,25 | 221:4,19 | 159:2 241:6 |
| 41:17 42:24 | 140:12 | 222:3,18 | 244:5,13,17, |
| 43:22 44:11 | 142:7,13 | 223:12 | 21 245:6,17, |
| 49:3,23 | 143:1,10,23 | 224:7,23 | 21 246:9 |
| 50:3,15 51:5 | 145:12 150:8 | 225:23 | **forth** |
| 52:8 56:11 | 153:25 154:8 | 226:22 | 79:12 262:6 |
| 58:19 61:16 | 155:3,11,21 | 227:4,9,19, | **forward** |
| 62:3,8,14, | 156:3,11 | 25 229:4 | 94:6,16 |
| 18,20 63:12, | 157:14 158:5 | 230:6 233:1, | 215:16 |
| 24 65:19 | 159:9 160:22 | 3,14,21 | **found** |
| 67:23 70:12, | 161:14 | 234:21 | 106:20 |
| 18 73:16 | 162:7,13 | 235:16 | 137:4,22 |
| 74:2 77:24 | 163:22 164:6 | 236:24 237:7 | 204:10 |
| 80:8,14 | 165:7,18,23 | 238:14,24 | 205:17 |
| 81:12 82:10 | 166:15,24 | 239:6 241:7, | **foundation** |
| 83:1,6 85:1, | 167:12,19 | 16 242:1 | 191:19 201:5 |
| 15 86:15 | 169:2,19 | 243:6 | 202:4 205:23 |
| 87:2,19 | 170:2,16 | 244:14,23 | 228:1 229:6 |
| 88:7,19 | 173:19 | 245:9 246:4, | 257:16 |
| 89:8,22 | 175:14 | 25 247:9 | **four** |
| 90:2,9,20 | 176:16 | 248:15 | 9:12 28:14 |
| 91:10,16 | 177:2,14,20 | 249:2,21 | 29:24 31:3 |
| 97:9,15 | 178:23 | 250:1 251:9, | 39:14 41:10 |
| 99:23 100:16 | 179:10,16,22 | 21 252:5,17, | 54:18 85:4 |
| 102:8,17 | 180:5,16 | 21 253:6 | 86:2 87:12 |
| 103:19,23 | 181:11,17 | 254:13 | 118:11 |
| 104:4,13 | 186:25 188:9 | 255:16 | **fourth** |
| 105:1,9 | 189:5,11 | 256:21 | 28:16,22 |
| 106:11 | 190:1 191:8 | 257:14 | 29:4 30:21 |
| 107:9,14,18, | 192:10,17,25 | 259:22 260:4 | 31:10,24 |
| 24 108:17,25 | 194:1,9,19, | 262:8 263:3, | |
| 109:7,19 | 24 195:12 | 19 264:19 | |

32:1,4,11,
15,19,22
33:1,15
74:10,19
83:20 144:9
170:7
**frame**
81:14
**framed**
74:19
**framework**
262:7
**freakish**
69:7
**freakishly**
68:16
**freeze**
25:6 110:20
**freezing**
110:7
**frequently**
47:9 53:24
**Friday**
93:1
**front**
52:23 53:4
56:2,3
**froze**
110:13
**fulfill**
202:8
**full**
26:20 74:10,
19 90:18
118:3 174:2
187:10 263:5
274:3,20,21
**fully**
93:9
**Fultz**
180:1
**Fultzs**
179:24
**fun**
259:25
**function**
152:9

**future**
98:1 99:5
211:10 263:9

———————————

**G**

———————————

**G-I-N-G-L-E-S**
53:17
**G-R-U-M-B-A-
C-H**
190:10
**gains**
273:4
**game**
216:24 230:8
**Garland**
132:20
**Gatte**
180:9
**gave**
22:17 47:2
65:20 174:6
**gears**
102:2
**general**
10:17 51:13
102:3 114:11
117:3 151:13
186:21
187:12
190:4,16
192:16
194:13
208:19 217:5
254:11
255:7,15,19,
20,22,23
256:1 263:15
264:23
**General's**
156:22
**generally**
102:15,23
103:18,22,25
104:11,25
109:5 121:3
131:18

132:1,12
134:22
163:21
215:10
222:20 228:2
259:1
260:16,19
261:9,14
264:18 266:1
271:5
**generate**
12:12 34:5
**generated**
13:16 29:7,
10 30:9,11,
13,15 165:10
**Generating**
9:6
**geographic**
60:19 61:1
159:15
166:20,23
167:17
168:9,24
**geographicall
y**
55:10 64:7
167:11
**geographies**
153:15
**George**
118:10
151:25 196:5
209:21
**German**
124:4,8
**Gerrychain**
11:3 23:12,
19
**gerrymander**
57:4,20
58:13 59:1
89:21 90:1,8
164:9 166:9
**gerrymanderin
g**
37:15 42:4

51:14,22
63:4 267:17
**gerrymanders**
12:15
**getting**
18:18,19
235:12
**giant**
117:6
**Gingles**
52:14,21,22
53:3,4,15,
17,21 55:12,
14 56:2,3,4,
6,8,9,14
58:1,2 64:9
67:9 68:2,8,
9,10 73:15,
18 166:14
167:16,24
168:8
**Gingles'**
168:21
**give**
16:1,6 23:11
48:17 49:17
64:24 75:14
77:25 81:19
82:17 88:14
112:8,21,23
113:4 114:18
124:3 138:17
159:18 175:1
206:20
226:18
265:19 271:9
277:23
**given**
15:1 20:19
34:9 41:21
42:1,8 68:16
80:11 90:13
105:3 113:25
130:5 143:3
167:20 193:4
223:10
**giving**
93:17 271:8

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **glaze** | 182:17 | **graph** | 14 97:17 |
| 34:9 | 183:24 191:4 | 26:22 29:23 | 103:8 106:9 |
| **go-to** | 193:8,14,16 | **gravitating** | 123:22,23 |
| 12:4,6 | 195:13 | 259:10 | 127:24 |
| **goal** | 199:22 | **greater** | 153:14 |
| 24:12 41:11 | 201:14 207:1 | 84:18 233:11 | 167:21 |
| 57:5 127:19 | 234:8 253:21 | 239:13 | 197:16 |
| 240:9 | 255:18,21 | 246:2,10,13 | 198:25 |
| **goals** | 256:10 257:5 | 247:6 248:5, | 229:12 |
| 24:1,6 | 258:16 | 7 | 245:11,12 |
| 55:12,14 | **good** | **green** | **grow** |
| 58:16,21 | 7:8 22:1 | 229:19 | 121:15 |
| 239:20 | 40:7 45:18 | 231:17 | **growing** |
| 243:10,18 | 51:2 55:16 | 232:20 | 95:20 96:17 |
| 245:1,13 | 57:3,16,17 | 234:25 | 99:12 100:8 |
| 247:13 | 58:9 61:8 | **Greg** | 206:9 |
| **Gobert** | 72:17,20 | 151:16 | **grown** |
| 181:5 | 87:8,11 93:5 | **grew** | 118:19 |
| **goes** | 114:11,12 | 95:7,10,23 | **growth** |
| 139:18 | 133:19 | 96:2,5,22 | 96:8,11 |
| 151:17 206:1 | 150:18 | 97:3,7 | 97:12,22 |
| 230:19 | 268:18 | **Gronke** | 98:5 101:24 |
| 237:15 264:3 | 270:24 | 51:7 | **Grumbach** |
| 273:11 | 271:19 | **ground** | 190:10 |
| 275:11 | **GOP** | 7:14 | **guarantee** |
| **going** | 99:13 100:9 | **group** | 14:22 25:15 |
| 7:13 32:7,21 | 170:10,23 | 40:22 52:16 | **guess** |
| 36:18 37:23 | **government** | 53:8,22 | 25:6,12 |
| 40:7,16 | 69:9 98:1 | 54:1,6,16 | 40:17 46:7 |
| 42:2,11,14 | 99:5 | 56:16,19 | 51:3 81:14 |
| 44:25 47:11 | **Governor** | 58:3 63:16 | 91:25 94:22 |
| 48:10,13 | 151:16 | 65:15,22 | 110:2,15 |
| 73:4 76:25 | **Governor's** | 67:1 68:13 | 114:15 128:7 |
| 77:11 82:13 | 208:13 | 101:25 | 129:17 |
| 84:1,8 85:24 | **Grabs** | 102:22 103:9 | 140:14 |
| 88:1 91:25 | 98:2 99:6 | 122:17 | 149:16 |
| 94:6,16 | **gradations** | 198:8,9 | 169:23 |
| 102:2,13 | 236:11 | **grouping** | 186:17 |
| 105:14,25 | 246:13 | 65:21 | 189:20 193:5 |
| 108:1 | **grade** | **groups** | 196:2 201:21 |
| 111:16,19 | 98:19 | 45:21 55:11 | 202:21 |
| 115:25 117:4 | **Grande** | 60:2,4,6 | 257:24 275:1 |
| 118:9 132:8 | 178:21 179:2 | 62:3,17,23 | **guessing** |
| 138:1 144:23 | 182:14 | 63:8 64:4,5, | 122:3 |
| 155:14,23 | 203:12 | 7,17,20 | **guidance** |
| 156:15 | **granted** | 66:25 67:11, | 198:4 |
| 158:20 | 73:3 | 12,21 89:5 | **guidelines** |
| 174:8,9 | | 95:15 96:11, | 61:21 |

Sean P. Trende
September 02, 2022

Gulf
  159:2
guy
  180:8

---

**H**

---

half
  101:20
  118:10  274:1
hand
  60:11  98:15
  115:6  117:13
  140:23
handed
  98:13  115:5
  117:20
  119:22
  139:12
  146:6,8
  232:7
handful
  38:14  39:11
  88:1
happened
  222:24
happy
  75:14
hard
  85:25  147:19
  178:5
harder
  120:22
  121:2,9
  275:17
Harris
  148:9,18
  149:20
Harris/fort
  240:22
Hasen
  51:10
hat
  60:13
Hats
  59:11

head
  55:25  60:11
  83:2  105:17
  160:17
  185:23  195:2
  199:2  277:16
heading
  154:18
  175:22
hear
  258:13
heard
  181:5  182:8
  204:21,25
  205:15,16,24
  209:8  222:5
  228:25
hearing
  203:19
heat
  274:3,9,11
  275:1
heavily
  97:17  101:12
  102:24
  112:6,19
  114:3  116:8
  122:6  131:10
  146:24
  174:10  195:4
  198:8,10
  205:9  229:11
  237:3  259:12
  265:15  269:2
  273:12
heavy
  46:25  131:11
  217:11
hedge
  76:11
Heights
  261:25
  262:2,7,22
held
  59:1  207:7
help
  125:3  126:13

helpful
  35:25  41:13
  56:1,13
  110:25
  194:12
  200:22,24
helps
  271:13
  273:23
  275:19
Henry
  206:10
hereinafter
  7:4
high
  167:10
  190:12
  255:13
higher
  13:21  27:24
  31:10,15
  84:5
highly
  19:25  264:25
  265:4  266:1
Highway
  250:23
hip
  124:5
Hispanic
  101:11
  103:2,21
  104:10,24
  118:9  124:7
  131:14,16
  136:19,24
  138:24  139:4
  140:4
  146:23,25
  148:22
  158:11
  169:10,11,17
  170:1  176:1
  177:19
  178:16
  181:21
  192:13,16
  196:11

  198:8,10
  202:19
  205:9,10,11
  236:25
  237:10
  247:18
  259:4,8
  260:3,7
  265:18
  266:19
Hispanics
  115:23
  116:3,7
  140:10
  169:7,15,25
  177:11  179:6
  181:9  182:14
  183:21  184:4
  196:4  202:22
historical
  124:20  126:9
  214:18  228:6
  265:24
  266:6,12
historically
  190:12  193:5
histories
  134:13
history
  28:20  121:19
  127:24
  133:23
  134:12,24
  222:24,25
  251:24  253:8
hoc
  142:2,11
holding
  207:9
home
  100:25
homogenous
  47:25  48:4,
  10,15  49:6
  192:13
hone
  19:2

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **honest**<br>154:10 155:5<br>**honestly**<br>148:24<br>205:25 259:9<br>**hope**<br>206:15<br>**hoping**<br>162:2<br>**hour**<br>44:25 92:1<br>193:9 277:20<br>**hours**<br>111:18<br>**house**<br>66:11,14<br>70:24 151:15<br>175:12<br>185:16<br>186:1,5,14<br>200:12<br>245:17,24<br>246:8,22<br>247:22<br>248:4,14<br>251:5,7<br>252:25<br>**Houston**<br>158:23<br>159:4,8,16<br>275:23<br>276:4,6,24<br>277:2<br>**HPA**<br>48:4<br>**hub**<br>79:7<br>**huge**<br>80:12<br>**Hull**<br>54:15 55:6<br>**human**<br>34:8<br>**hundreds**<br>233:23<br>**hypothesis**<br>42:22 | **hypothetical**<br>145:16<br>191:19<br>201:5,9<br>202:4 227:21<br>228:1,22<br>229:5 257:6,<br>15<br>**hypothetically**<br>42:15 84:3,<br>15 85:9,12<br>86:7 89:3<br>258:1<br><br>**I**<br><br>**I-14**<br>250:21<br>**I-35**<br>250:22<br>**I-71**<br>147:17<br>**I-KNOW-IT-<br>WHEN-I-SEE-<br>IT-TYPE**<br>55:19<br>**idea**<br>64:13 98:20<br>132:25 133:3<br>148:24<br>149:13<br>255:21<br>**ideal**<br>255:21<br>**ideally**<br>48:7<br>**identification**<br>7:19 69:16<br>81:23 98:10<br>115:2 117:10<br>119:19 139:9<br>140:20 146:3<br>232:4 250:8<br>254:21 | **identified**<br>134:10<br>**ignorant**<br>107:6<br>**ignore**<br>73:19<br>**ignores**<br>113:20<br>270:18<br>**Illinois**<br>147:15<br>**illuminate**<br>42:14 43:17<br>264:16<br>**illuminative**<br>43:3<br>**illustrate**<br>152:25<br>**illustration**<br>88:14<br>**imagine**<br>54:3 163:7<br>169:23<br>201:10<br>247:16<br>**Imai**<br>10:15 20:4<br>34:14<br>**immediate**<br>112:8,21<br>**immediately**<br>132:16<br>133:10 193:2<br>**impact**<br>59:14 97:22<br>98:6 253:4<br>**impacted**<br>276:13<br>**imperfect**<br>144:22<br>**implement**<br>26:4<br>**implemented**<br>10:16<br>**imply**<br>81:5 | **importance**<br>101:19 194:7<br>**important**<br>49:21 93:18<br>125:10<br>127:23<br>134:20<br>200:18<br>**importantly**<br>68:19<br>**impossible**<br>90:11 226:10<br>243:1<br>**improve**<br>124:24<br>125:4,17<br>214:22<br>216:21<br>217:12<br>218:21<br>220:9,21<br>229:2,13<br>240:7,18<br>247:5<br>**improved**<br>172:21<br>216:1,7,13,<br>15 217:20,23<br>252:12<br>**improvement**<br>216:5 217:2,<br>6 218:5,24<br>219:17 234:3<br>235:9,11,14,<br>17 239:23<br>240:2<br>**improves**<br>216:2 218:1<br>219:7<br>**improving**<br>216:6 218:24<br>227:12 247:3<br>249:18<br>253:19<br>**inadvertently**<br>40:8 200:23<br>201:23 |

Sean P. Trende
September 02, 2022

include
  43:10 153:9
  155:24
  174:12
  202:22
  248:24
included
  232:8 250:20
includes
  134:25
  238:21
  250:15,17
including
  64:21 79:6
  138:17
  226:23
incomplete
  191:18 201:5
  202:3 228:1
  229:5 257:15
incorporating
  144:8
incorrect
  253:12
incorrectly
  10:22
increase
  112:7,20
  183:21
  197:18
  198:16 218:5
  219:3 237:19
increased
  95:16 203:22
increases
  112:13
increasing
  112:6,11,19
  113:4 196:25
increasingly
  120:16
  132:18
incumbency
  206:10
incumbent
  227:16,22,23
  228:5 235:19

268:5
incumbents
  219:24
Indeed
  131:12
independent
  104:8,22
  200:3
indicate
  263:6
indicates
  166:9 232:20
  236:4 240:25
  242:14 244:8
  245:20
  247:25
indicator
  236:15
indifferent
  107:6 253:15
indirect
  152:22
indirectly
  94:18
individual
  126:22
individuals
  45:19 63:6
  150:21 183:6
  214:8
inevitable
  265:21
inevitably
  55:18
inextricably
  265:8,17
infer
  86:12
inference
  16:25 35:9,
  12 45:9,12
  46:5,18
  47:14,17,22
  48:9 81:2
  112:8,21,23
  113:5 182:23
  193:22 194:3

inferences
  44:14
inferring
  21:24
influence
  255:7,22,23
  256:19
  257:12
information
  34:6,18
  123:17 181:7
  274:14
initial
  20:7 70:7,
  11,16 87:11
  256:9
initially
  261:5
inquire
  126:15
inquiries
  64:21
inquiry
  37:12 63:18
  64:22 89:1
  108:18
  109:12
  127:19
inserted
  216:25
insight
  53:18 138:17
  161:4 168:4
inspection
  220:25
instances
  60:7 113:21
  114:12 116:7
  142:14
  266:18,19
  270:19
instruct
  176:12
intact
  76:20
intend
  40:17 82:8

90:19 211:12
intended
  136:11
intent
  88:15,17,24
  90:21
  108:10,12,
  19,21 137:5
  142:19,25
  143:7 220:8,
  15 261:17,23
intentional
  135:1 204:10
  205:17
  206:20
intentions
  82:12 155:14
  211:15
intercept
  225:11
interest
  47:13 61:4,
  17,23,25
  62:4,19
  66:4,9
  227:24 263:9
  264:16
interested
  34:4,24
  64:11 111:1
  226:19
  239:18
interesting
  127:2,6
interests
  29:17 164:4,
  10,15
  165:22,25
  166:2,5
  179:9 204:3
intermixed
  264:5,10
  265:25
  266:17
  267:21
interpretatio
n

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 23:22 24:4 | issue- | journals | 22:2,23 |
| 65:9,10,18 | specific | 50:7 | 23:10,15,24 |
| **interrelated** | 194:11 | **Jowei** | 24:9 26:23 |
| 266:9 | **issues** | 13:17 | 28:8 29:8, |
| **intertwined** | 167:6 194:7, | **judge** | 14,19 33:8, |
| 265:8,17 | 13 | 34:10 37:4 | 14,20 35:5, |
| 267:14 | **iteration** | 190:17 191:2 | 17 36:3,10, |
| **intervals** | 148:2 | **judges** | 16 37:10,19 |
| 9:1 | **iterative** | 35:23 267:21 | 38:6,12 |
| **intervene** | 47:15 | **June** | 39:23 40:14 |
| 257:21 | | 133:9,14,15 | 41:17 42:24 |
| **interview** | | 208:1 | 43:22 44:11 |
| 214:8 | **J** | **junk** | 49:3,23 |
| **intricacies** | | 50:4 | 50:3,15 51:5 |
| 194:14 | **J-O-W-E-I** | **Justice** | 52:8 56:11 |
| **intro** | 13:18 | 55:17 61:15 | 58:19 62:5, |
| 98:21 | **Jacki** | 63:25 166:18 | 8,14,20 |
| **introduce** | 93:6 | **justified** | 63:12,24 |
| 69:12 81:16 | **January** | 121:21 | 65:19 67:23 |
| **introduced** | 179:21 181:2 | **Justin** | 70:12,18 |
| 258:22 | **Jarndyce** | 180:23 | 73:16 74:2 |
| **intuitive** | 206:1 | | 75:16 77:24 |
| 34:17 | **Jay** | | 80:8,14 |
| **invalid** | 151:24 | **K** | 81:12 82:10, |
| 80:16 | 209:19 | | 19,22 83:1,6 |
| **inverse** | **job** | **keep** | 85:1,15,18 |
| 167:7 196:22 | 9:8 43:1 | 9:1 193:14 | 86:15 87:2, |
| **investigated** | 180:15 | 245:11 | 19 88:7,19 |
| 91:18 | **jobs** | **keeping** | 89:8,22 |
| **involve** | 9:9 | 146:23,24 | 90:2,9,20 |
| 143:6 200:14 | **Joe** | 173:6,10,11 | 91:10,16 |
| **involved** | 30:22,23 | 205:2,8,10, | 97:9,15 |
| 119:8 | 31:6 41:20 | 18 240:2 | 99:23 100:16 |
| 137:14,17 | 43:13 68:14 | 245:6 247:6 | 102:8,17 |
| 227:17,22 | 71:6 171:14 | 259:4,8 | 103:19,23 |
| **involves** | 217:3 223:13 | **Keith** | 104:4,13,18 |
| 9:2 | **John** | 180:9 | 105:1,9 |
| **involving** | 93:22,25 | **kept** | 106:2,11 |
| 142:6,12,17, | 175:11 | 76:20 | 107:9,14,18, |
| 23 | 191:6,15,24 | 173:11,17 | 24 108:17,25 |
| **issue** | **Johnson** | 239:12 | 109:7,19 |
| 46:8 167:9 | 180:22 | 243:14 252:7 | 110:23 |
| 194:17 | **Jonathan** | **Kercher** | 111:5,15 |
| 265:23 | 254:8 | 8:17,21 10:7 | 112:14,25 |
| 267:24 | **Journal** | 11:9 14:11 | 113:7,12 |
| | 50:21 51:4 | 15:18 16:3 | 114:10,21 |
| | 141:4 | 19:22 20:2, | 116:5,21 |
| | | 13 21:1 | 118:21,24 |
| | | | 119:1 121:10 |

| | | | |
|---|---|---|---|
| 122:1,10,16, | 196:18 | 255:16 | 24 49:8,15, |
| 24 123:9,14, | 197:2,11,23 | 256:21 | 16 50:13,19 |
| 21 124:2 | 198:21 | 257:14 258:5 | 51:7,13 56:1 |
| 125:6,14 | 200:21 201:4 | 259:22 260:4 | 57:1 61:24 |
| 126:7,20 | 202:3,13 | 262:8,17 | 62:9 63:8 |
| 127:10,17 | 203:2 | 263:3,19 | 64:15 65:12 |
| 128:3 129:14 | 204:13,23 | 264:19 | 67:13 70:6, |
| 130:7,14,20, | 205:5,22 | 265:1,9 | 13 73:22 |
| 25 131:19,23 | 206:16,22 | 266:2,10,21 | 75:10 77:9, |
| 132:3,7 | 207:3 208:8, | 267:8,18,25 | 15 79:18 |
| 134:8 135:3, | 14,20 209:6 | 268:10,16,22 | 80:1,11,16 |
| 12,16,23 | 211:14,20 | 269:9,23 | 85:24 86:2, |
| 137:6,10,16, | 212:18,25 | 271:25 | 18,23 87:20 |
| 25 140:12 | 213:10,15,20 | 272:9,18 | 88:2,9,21,23 |
| 142:7,13,20 | 214:4,10 | **Killeen** | 89:3 90:10 |
| 143:1,10,23 | 215:7,23 | 248:14 | 94:8,21 |
| 145:12 150:8 | 216:9,23 | 252:15 253:3 | 96:19,24,25 |
| 153:25 154:8 | 217:14 218:7 | **Kincaid** | 100:24,25 |
| 155:3,11,21 | 219:6 220:5, | 180:24 181:1 | 103:5,6 |
| 156:3,11 | 11,17,22 | **kind** | 105:12,16 |
| 157:14 158:5 | 221:4,19,23 | 26:4 33:19 | 106:6 108:7, |
| 159:9,12 | 222:3,7,11, | 47:11,18 | 13 109:8 |
| 160:22 | 18 223:12 | 48:20 61:10 | 113:1,8,11, |
| 161:14 | 224:7,23 | 63:7 73:24 | 13 115:22 |
| 162:7,13 | 225:23 | 93:12 124:5 | 116:11,24 |
| 163:22 | 226:22 | 128:7 206:1 | 117:1 123:15 |
| 164:6,17 | 227:4,9,19, | 223:3 | 126:14,24 |
| 165:7,12,18, | 25 228:9 | **kinds** | 127:12,18 |
| 23 166:3,15, | 229:4 230:6 | 8:19 | 130:9,11 |
| 24 167:12,19 | 231:4,13 | **knew** | 132:11 |
| 168:11 | 233:1,14,21 | 89:4 137:14 | 133:6,16 |
| 169:2,19 | 234:21 | **know** | 134:20 |
| 170:2,16 | 235:2,16 | 8:8 10:22, | 135:13 |
| 173:19,22 | 236:24 237:7 | 23,25 12:3 | 137:12 |
| 175:14 | 238:14,24 | 13:5,7,10 | 139:1,3 |
| 176:10,16 | 239:6,15 | 14:5,14 15:1 | 140:17 |
| 177:2,14,20 | 240:5,14 | 19:3,20,24, | 143:11 |
| 178:23 | 241:7,16 | 25 20:11 | 145:20 |
| 179:3,10,16, | 242:1 243:6, | 21:3,18 22:9 | 147:12,17,19 |
| 22 180:5,12, | 16,24 | 23:25 27:20 | 149:7 150:22 |
| 16 181:11,17 | 244:14,23 | 29:20 35:2, | 154:10 155:6 |
| 186:25 188:9 | 245:9 246:4, | 25 37:21,22 | 156:5,19 |
| 189:5,11 | 11,18,25 | 38:8 39:24 | 157:17,18 |
| 190:1 191:8, | 247:9 248:15 | 40:2,16 | 158:7,13 |
| 18 192:2,10, | 249:2,8,13, | 41:14,24 | 159:1 160:12 |
| 17,25 193:8, | 21 250:1 | 42:16 45:12, | 161:15 |
| 14 194:1,9, | 251:9,15,21 | 19,20 46:11, | 165:1,5,8, |
| 19,24 | 252:5,17,21 | 12,20 48:12, | 14,19 |
| 195:12,25 | 253:6 254:13 | | 167:14,24 |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 168:13,15 | knowing | | 11 122:22 |
| 169:20 | 89:15 | **L** | 123:5 129:23 |
| 170:3,4 | knowledge | | 130:10,11,24 |
| 175:9 | 47:21,24 | labeled | 150:20 |
| 177:15,23 | 49:6 61:24 | 235:24 | 175:12,19 |
| 179:13,24 | 118:25 | 240:21 | 179:15 |
| 180:1,3,11, | 144:15 | 242:10 244:4 | 187:5,15,19, |
| 14,17,19,24 | 155:19,22 | 245:16 | 25 188:6,7, |
| 181:7,12,19 | 179:23 | 247:21 | 20,23 |
| 182:15 188:6 | 181:16 | Lack | 189:10,19 |
| 189:8,14,24 | 208:10,15,23 | 201:5 | 192:7,23 |
| 190:2 | 209:1,9 | lacking | 194:6,22 |
| 191:11,20 | 210:20 | 63:1 | 195:6,9 |
| 192:3,18,20 | 211:22 212:9 | lacks | 196:14,16, |
| 193:6 194:14 | 213:11,12,17 | 202:4 205:23 | 24,25 197:10 |
| 195:1 196:2, | 214:1 | 228:1 229:5 | 202:10 |
| 15,21,23 | known | 257:15 | 205:1,3,19 |
| 197:5 | 164:25 | laid | 206:11,13 |
| 198:22,25 | Korbel | 174:2 232:12 | 236:5,22,23, |
| 200:1,19 | 151:25 | Lampases | 25 237:3,5, |
| 203:13 210:5 | 165:13 | 250:14,16,17 | 10 239:13 |
| 211:4 213:6 | 209:21 | landed | 240:3 |
| 216:10,24 | Korbel's | 149:23 | 242:15,19,20 |
| 217:1,16 | 213:23 | language | 243:14 |
| 226:23,25 | Kosuke | 11:4 12:4,6 | 245:21,25 |
| 227:11,12,16 | 10:15 | 151:8,17 | 246:2,10 |
| 228:5,14,16 | Kousser | 158:14 | 247:6 |
| 231:17 | 38:7 113:20 | 216:17 | Latino- |
| 233:5,6,15 | 151:24 | 218:21 | majority |
| 234:24 | 209:19 | laptop | 175:7 |
| 239:10,17 | 260:16,19,20 | 77:25 | Latino- |
| 240:11 | 261:3,6,7,14 | large | preferred |
| 243:9,17,21 | 263:6,16,25 | 9:4 161:5 | 186:23 |
| 247:4,12 | 264:3 270:18 | largely | 189:25 |
| 249:10,15 | 274:23 | 206:5 | 197:21 |
| 251:17,23 | 276:24 277:7 | largest | Latinos |
| 252:7,10,13 | Kousser's | 141:25 | 118:11,18 |
| 255:11 | 260:13 | Larry | 183:25 188:3 |
| 257:24 | 264:12 | 117:16 | 193:23 194:8 |
| 258:23 | 266:16 | late | 195:9,22 |
| 260:5,6 | 267:12 274:2 | 150:22 | 197:7,15 |
| 262:1 263:21 | 277:10,15 | Latin | 198:18 201:2 |
| 265:2 268:2, | Kuriwaki | 150:19 | 202:1 206:12 |
| 24 269:11,13 | 182:18 | Latino | law |
| 270:13 | | 59:20 97:22 | 50:21 51:4, |
| 272:10,14,21 | | 98:5 99:12, | 24 64:10 |
| 273:14 | | 16 100:5,8, | 140:24,25 |
| 275:18 | | | 141:3,4,8 |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 145:4 167:25 | 40:15 49:25 | **legislatures** | **likelihood** |
| 168:1,15 | 50:2 56:22 | 268:5 | 198:16,18 |
| 180:23 | 88:24 128:5 | **legitimate** | **likes** |
| 209:4,8 | 129:15 | 16:15,21 | 147:13 |
| 267:20,24 | 157:15 | 138:4 239:19 | **Likewise** |
| 268:3 | 167:14 | **length** | 110:12 |
| **lawsuit** | **legend** | 83:15 | 220:14 |
| 80:23 81:6 | 232:20 | **lengthy** | **limit** |
| 245:14 | 236:4,15,17 | 47:14 | 9:3 116:12 |
| **lawyer** | 240:24 | **lesser** | **limiting** |
| 207:19 | 242:14 244:8 | 235:14 | 84:10,15 |
| **lawyers** | 245:20 | **letter** | **line** |
| 8:8 35:22 | 247:25 | 12:8 | 47:18 111:13 |
| 67:14 155:15 | **legislative** | **level** | 134:15 |
| 156:15,18, | 22:7,8 | 22:14 65:17 | 147:19 |
| 19,21 157:18 | 164:21,24 | 69:8 76:7, | 154:14,19 |
| 161:15 162:3 | 165:6,16 | 18,25 79:24 | 162:24 |
| **lead** | 180:4 253:8 | 80:20,24 | 170:8,9 |
| 125:3 | 258:16 | 86:9,10 | 176:2 |
| **League** | **legislators** | 121:6 | 229:19,20,25 |
| 150:19 | 179:20 | 123:18,19,24 | 233:13 248:8 |
| **lean** | 196:15,23,24 | 203:3 223:9, | 263:7,10 |
| 43:24 | 227:17,22,24 | 11 225:14,15 | **line-by-line** |
| **leaning** | 228:6,12,17 | 240:2 | 111:22 |
| 41:7 44:10 | 249:6,11 | 255:13,19 | **lines** |
| 122:15 123:6 | 253:1 | 275:24 | 73:20 101:23 |
| **leaping** | **legislature** | 276:25 | 113:6,21,23 |
| 264:4 | 16:16,18,22 | **leverage** | 114:19 |
| **learn** | 17:2 20:21, | 171:6,18 | 172:7,16 |
| 43:19,21,24, | 25 21:4,7 | 173:1,16 | 221:1 231:17 |
| 25 63:8 | 24:1,11 25:5 | 177:18 | 234:25 |
| **leave** | 37:8 38:16, | 196:14 | 236:18,22 |
| 117:2 | 23 43:7 | **Levitt** | 237:5,11 |
| **leaving** | 85:22 86:18 | 180:23 | 238:22,23 |
| 206:14 | 87:14,25 | **liable** | 239:4,8,12 |
| **led** | 107:22 110:7 | 205:17 | 241:4,11,13, |
| 266:6 | 151:15 208:7 | **liberal** | 15,19 |
| **left** | 215:3 220:9, | 132:17 | 242:18,22,23 |
| 26:15,19,25 | 16 235:19 | **liberals** | 243:9 244:18 |
| 191:11 236:3 | 239:10,20 | 89:14 | 245:1,10 |
| 240:24 | 240:9 242:5 | **lies** | 247:16 |
| 271:14,15,22 | 243:12 | 64:14 | 252:23 |
| 273:23 | 249:16 | **life** | 270:20 |
| **left-hand** | **legislature's** | 8:25 32:8 | 274:8,9 |
| 247:24 | 37:17 220:20 | **light** | 275:11 |
| **legal** | 243:10,18 | 42:7 126:13 | **linking** |
| 8:7 37:1,3 | 245:1,13 | 153:19 | 147:17 |
| | 247:13 | | |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **lion's** | **location** | 191:1,9 | 125:25 |
| 161:9 | 64:3,4 | 202:16 | 126:2,12 |
| **list** | **Logan** | 216:10,11 | 127:2 128:2, |
| 9:16,17 | 93:22,25 | 221:7 231:23 | 21 140:3 |
| 183:24 | 94:9 | 234:9,22 | 166:11 176:8 |
| 184:7,9,15, | **Logan's** | 235:22,23 | 187:8 207:6 |
| 22 185:3,10 | 94:3,6 | 237:24 | 215:16 |
| 212:11 | **long** | 238:15,16 | 228:17 |
| **listed** | 13:24 47:12 | 240:19 251:2 | 229:25 |
| 61:15 212:14 | 92:3 115:18, | 254:14 | 231:16 |
| **listen** | 24,25 133:4 | 270:17 | 232:23 239:2 |
| 255:12 | 203:7 216:7 | 271:17 | 242:17 |
| **literature** | **long-term** | 272:15,20 | 245:23 |
| 50:25 51:23 | 102:1 | 275:2 | 248:11 251:3 |
| 63:2 109:10 | **longer** | **looked** | 273:18 |
| **litigation** | 99:17 100:13 | 11:17 21:4 | **looks** |
| 20:15 109:11 | 138:4,9 | 22:1,6 43:19 | 71:2 236:13 |
| 110:12 | 189:13 | 51:8 70:10 | 237:1,10 |
| 247:14 | 193:16 | 73:22 74:6 | 250:23 |
| **little** | **look** | 89:23,24 | 251:24 |
| 54:1 65:1 | 16:7 22:20 | 90:3 103:7 | **loosely** |
| 75:25 77:9 | 23:4,18 26:8 | 125:22,24 | 259:13 |
| 85:25 103:3 | 27:16 30:8 | 126:24 | **lose** |
| 138:1 141:16 | 31:18 32:18, | 145:19 | 34:17 225:1 |
| 148:15 157:2 | 25 34:4,7 | 148:14 | **losing** |
| 172:5,14 | 38:4,10,19 | 149:22 | 219:25 |
| 206:15 | 41:15 42:18 | 154:12 158:8 | 220:2,3 |
| 215:19 | 44:7,16 46:7 | 159:19 | **loss** |
| 250:25 | 48:5 49:4 | 218:21 | 100:7 138:5 |
| 257:18 | 52:11 59:15, | 224:24 | **lost** |
| **live** | 19 60:5,16, | 232:11 234:7 | 99:5 219:25 |
| 165:21,24 | 24 62:21 | 245:10 250:2 | 223:24 |
| 166:2,4 | 64:3 66:4 | 260:5 264:21 | **lot** |
| 202:19,22 | 72:14 75:3,5 | 274:6 | 9:4 42:7 |
| 222:4 | 78:4,22 | **looking** | 43:5,24 44:1 |
| **lived** | 83:18 85:3 | 16:13 21:23 | 45:25 50:4,5 |
| 89:5 203:5, | 87:6 102:9, | 26:19 27:5, | 59:13 89:14 |
| 8,9,13 | 11 103:10 | 9,12 32:2 | 91:17 116:13 |
| **lives** | 125:10,20 | 33:1 39:3 | 121:20 |
| 55:2 | 126:16,18, | 41:1 42:5,13 | 132:15,17 |
| **living** | 22,25 127:23 | 43:4,9,16 | 139:18 140:7 |
| 44:22 65:13 | 129:3 138:14 | 46:8 57:21 | 167:9 182:4 |
| **local** | 149:6,14 | 60:19 61:1 | 195:4 203:14 |
| 69:23 191:1 | 151:9 154:11 | 64:4 71:16, | 251:24 |
| **located** | 159:14 | 17,18,20 | 260:20 |
| 63:22 | 160:16 170:7 | 72:21 75:11 | **loud** |
| | 171:3 172:1 | 81:18 83:22 | 112:3 118:7 |
| | 190:14,15,23 | 85:7 109:12 | 141:17 |

Sean P. Trende
September 02, 2022

**Louisiana**
  163:5
**love**
  59:12 117:6
**low**
  35:3 205:3
**Lowenstein**
  51:17
**lower**
  33:10,23
  35:13 46:24
  86:11 224:17
  225:1 240:24
  242:13 244:7
  245:19
  247:24
**lower-left**
  54:12
**lower-right**
  54:10
**lower?**
  116:1
**Lubbock**
  66:15 68:6,
  7,24 69:3
  73:23 75:4
  91:11 159:22
**Lujan**
  175:11
**LULAC**
  62:17,22
  138:6,7
  150:20
  152:14,18
  153:1 155:7,
  24 160:7
  167:20
  206:7,8,18
  207:8,9
**lunch**
  91:23 92:11

---

**M**

---

**made**
  64:12 71:14
  76:6 78:19

104:20
122:19
129:12 145:8
151:23
156:14
158:15,17
171:21,24
173:5,15,18
174:17
209:18,24
210:3,14
211:8 230:7
276:7
**main**
  101:21
  137:18
**Maine**
  223:2
**maintained**
  79:6
**maintaining**
  173:17
**majority**
  31:22,24
  32:1,15,20
  35:1 40:19,
  22 52:17
  53:9 60:2
  63:17 76:19
  98:1 99:5
  101:15 106:9
  110:8,14,15
  123:25
  127:14
  179:15 201:3
  202:2 205:8
  259:4,8
  260:2,3
**majority-minority**
  163:20 164:2
  166:8
**majority-trump**
  146:22
**majority/majority**
  32:22

**make**
  26:25 28:7,
  25 33:19
  65:21 78:12
  93:12 108:1
  109:8 123:3,
  10 124:9
  142:5,17,23
  143:5
  146:22,23
  147:25
  173:25
  181:22
  193:18
  199:18
  235:18,19
  236:10 251:1
  257:18
  260:24 270:8
  271:6
**makes**
  139:17 147:8
  193:4
**makeup**
  89:15 107:4
  272:21
**makeups**
  107:5
**making**
  107:13,17
  121:23
  122:7,22
  123:4 134:5
  146:21 172:3
  174:10
  205:8,9
  218:25 259:7
  260:2 275:24
**malapportioned**
  251:25
**Manipulating**
  9:6
**manner**
  241:24
**manual**
  13:7 15:8

**manuals**
  13:9
**map**
  13:25 25:15,
  17 28:6
  29:23 30:19,
  25 31:2
  35:10 39:18
  41:19 58:23
  76:20 83:19
  88:6 102:7
  105:21,23
  106:8,15,18,
  23,25 107:2,
  7,10,12,16,
  21 108:11,
  14,16 114:12
  123:13
  125:13 128:1
  129:10,11
  130:4,12
  134:21
  137:18
  147:8,14
  180:4,11
  181:2 201:1,
  25 213:8,13,
  18 214:2
  215:17
  226:25
  227:7,11
  229:19,20
  230:4
  232:15,23
  236:5
  238:22,23
  239:4
  240:17,20
  241:4,25
  242:10,15
  244:3
  245:16,23
  247:21,25
  248:10
  251:4,8,18
  259:3,13
  268:7,13,19
  274:3,9,11
  275:1

**map's**
  276:11
**map-drawing**
  213:14
  269:19
  270:10
**mapmakers**
  29:25 58:15
  89:4 275:24
**maps**
  9:6 12:12
  13:16 14:3
  16:16,18
  18:8 19:13
  22:7,8 25:19
  27:10 28:6
  32:21 36:23
  37:6,14,18
  38:1,21,22,
  23 39:11,14
  41:8 58:20
  85:6 88:1
  89:7 90:7
  102:11 108:7
  110:5 111:10
  114:23,24
  125:16
  138:15
  146:19
  147:14
  152:9,15,16,
  19 153:1,5,
  9,13,18,23
  154:3 155:1,
  7,10,19,25
  156:7,17
  157:11
  158:2,9,10,
  22 161:4
  162:19 176:9
  207:19
  210:22
  211:18,19
  212:1,2,7,8,
  22 213:4,6,8
  214:9 217:24
  227:18 232:8
  235:23

  240:16
  243:19
  249:17,19,23
  250:2 262:14
  267:16
  269:16,20
  270:2 277:3
**margin**
  48:21 83:20
  195:17
  215:20 220:2
  273:18
**marginal**
  43:17 273:5,
  8,10,19,22
**marginally**
  43:25 44:2
  240:8
**mark**
  7:16 81:20
  206:20 232:1
  250:4
**marked**
  7:19 69:16
  80:5 81:23
  98:10,14
  115:2,6
  117:10
  119:19,23
  139:9,13
  140:20
  146:3,7
  232:4 250:8
  254:21
**markets**
  60:25
**Markov**
  17:21,22
**Markov's**
  18:4
**Martinez**
  210:14,18
**Maryland**
  14:22 25:9,
  19 34:8
  57:22 58:25
  59:4 109:24,
  25

**mass**
  99:14 100:10
**Master**
  180:15
**masthead**
  51:9,23
**match**
  38:15 87:24
  107:1
**materials**
  212:14,16,21
**math**
  235:12
**matter**
  38:14 55:18
  64:1 92:1
  126:23
  166:19
  202:17 255:1
**Mayra**
  188:20
  189:24
**Mccaffity**
  258:12,15
  272:6,7
  277:23
**Mccarton**
  14:2
**MCMC**
  17:16,17
  22:11
**mean**
  16:23,24
  18:3 24:25
  32:16 33:5,
  11 38:17
  44:23 48:7
  49:12 50:24,
  25 51:1 54:2
  61:7 76:9
  78:9 106:14
  116:2,18
  128:25
  147:21
  153:12
  170:14,20
  171:8 175:17

  179:19
  192:23 211:3
  215:13
  219:22
  225:2,5
  233:22
  235:17
  251:16
  259:17
  260:17
  271:7,23
  273:8
**meaning**
  64:25 108:1
  218:20
**meaningful**
  48:17
**meaningless**
  64:24
**means**
  13:13 18:10
  45:12 48:3
  60:22 61:12
  145:5,11
  169:9 178:13
  216:11
  218:24 230:4
  249:19
  253:16
**meant**
  38:1 57:14
  143:12 144:2
**measured**
  53:15
**measures**
  262:5
**media**
  60:24
**Medicaid**
  194:15
**medication**
  93:11
**medium-**
  102:1
**meet**
  55:11,12,14
  64:8 67:21,

Sean P. Trende
September 02, 2022

24 68:1
166:14
**members**
45:21 208:6,
13,18
**mention**
93:22 158:21
187:4 190:3
256:10
**mentioned**
10:1 13:10
50:8 54:24
82:15 130:2
153:3 154:6
158:15
159:23
170:12,13
185:14 186:1
188:15
190:20
194:25
196:10 204:5
206:4 213:22
242:22
**mentions**
154:19,23
160:18
**merged**
261:8
**method**
12:14 45:9
46:3,6,16,19
47:14,17,18
48:1,14
49:1,6,22
50:9 81:15
**methodologist**
20:17
**methodology**
8:13 9:2
199:6
**methods**
8:15,19
13:21 23:9
47:13
**metric**
48:16 55:5,6
79:20 81:11

198:3
**metrics**
55:15
**Metroplex**
273:3
**Mexican**
258:16
**mid**
46:2
**middle**
58:14 78:17
101:5 167:2,
3 175:5
**Miller**
61:17
**mind**
114:1,16
138:2 152:7
159:3 162:20
168:23
199:25 204:3
216:20
228:24 229:1
**Mine**
26:13
**minorities**
63:22 65:13
123:25
**minority**
19:5 26:20
27:5 28:4
31:22 35:3
40:19,22
48:6,7,11,15
52:16 53:7,
8,22,25
54:6,16
55:2,3,11
56:9,16,19
58:3 60:4,16
62:3,18,25
63:8,16
64:3,4,7
66:25 67:1,
11,21 68:13,
18,21 69:6,
10 71:11,17
95:7,9,12,

15,16 96:1,
4,8,10 97:3,
6,12,16
102:19,22
103:8 106:9
110:8,13,15
121:15
123:22
146:20 148:4
149:17,19
152:10
154:18
166:13,22
167:1,8
168:3,19
189:14
200:19
201:23
228:22
229:3,10,12
231:19,24
257:11,13,
23,25 267:3
**minority-
majority**
146:22
147:23
148:1,8,18
149:1,4,12,
17,21
**minute**
150:11
277:24
**minutes**
75:18 92:1
193:9,17
253:21
**Miranda**
59:10,13,18
73:22
**Miranda's**
60:10
**misleading**
93:18
**Missing**
120:2,10
**Mississippi**
201:11,13

**misstates**
24:10 37:20
43:22 50:15
87:2 88:7
102:17
125:7,14
237:8 266:22
269:24
**missteps**
142:3
**model**
22:12 23:19
**models**
22:15
**modern**
196:8
**Modest**
141:1
**modification**
101:16
**modified**
101:9
**modifies**
126:8
**moment**
153:3 154:11
163:17
185:18
**Monte**
10:15 12:11
13:17 17:21
18:4,7
**months**
133:2
**Moon**
9:20 10:6
151:24
209:20
**Morales**
53:2 151:25
152:25
153:6,10
154:15,20,23
158:16,17,21
160:11,15,21
161:2,13,17
209:20 213:4

Sean P. Trende
September 02, 2022

Morales's
  153:19,24
  154:3,6
  155:2,10,20,
  24 156:8,13
  157:4,11
  158:3 160:19
  161:23 162:6
Morgan
  151:24
  209:19
morning
  7:8
motivated
  106:24
  267:16
motivation
  37:8 90:4
  134:15 145:4
move
  48:19 66:3
  68:5 107:3
  111:20
  132:20 178:9
  228:14 230:4
  238:18
moved
  77:22 97:18
  168:6
  170:10,22
  198:12
  234:15,16
  238:2,11
  263:1 276:20
movement
  95:12,17
moving
  198:15
  206:12
multiple
  50:11 61:22
  113:21
  270:19

_____

        N

_____

NAACP

7:10 62:17,
22 91:22
name
  7:8 51:18
  93:5 137:11
  150:18 154:6
  160:19
  182:18
  204:19
  207:18
  258:15
named
  180:20
names
  199:25
  248:11
narrow
  198:24
narrowly
  171:14
national
  173:13
nationally
  178:20
nationwide
  43:12
naturally
  28:13 31:24
  32:16 35:1,
  7,8 41:22
necessarily
  35:25 37:7
  55:4 57:3
  58:8,24
  63:20 67:19
  72:5,16,20
  73:10,11,14
  84:6 90:6
  106:25
  107:23 113:2
  114:4,13
  124:3 126:16
  142:8
  144:14,16
  162:23
  197:14,20
  198:13,18
  222:15

223:10 225:3
  259:18
necessary
  46:4 99:14
  100:10
  233:20 239:5
  241:15 243:3
  244:20
  246:22
  252:13
need
  76:22 83:18
  86:21 87:8
  150:11 172:2
  199:21 230:8
  253:10
  277:13
needed
  193:10
  217:10 218:4
needlessly
  134:19
negative
  143:3,4
nerding
  259:2
net
  219:10
  230:18
neutral
  29:18 31:9,
  14 35:16
  42:23
never
  37:12 94:9
  108:16
  119:11,14
  137:7,12
  204:14 209:8
  222:5,9,12
newer
  13:20
Nina
  150:18
NMI
  14:2

non-african
  46:14
non-compact
  57:19 152:10
non-hispanic
  136:7 198:12
  275:7,13
non-rigorous
  259:17
non-u.s.
  169:16,25
nonexclusive
  61:19
nonresponsive
  157:22 272:6
nonwhite
  120:15,18
  121:19
  183:17
noodle
  199:1
normal
  34:8 92:6
norms
  144:9
north
  114:15
  132:16
  159:6,8
  274:7
northern
  163:10
  174:17,20,25
note
  31:19,20
  66:23 67:13
  68:19 78:23
  140:24
  141:11,12
  144:18
  159:12
  223:23
  224:3,12,25
  234:14
noted
  67:15 173:4

| | | | |
|---|---|---|---|
| **notes** | **numerous** | 90:2,9,20 | 177:2,14,20 |
| 253:21 | 52:16 53:9 | 91:10,16 | 178:23 |
| **noteworthy** | 56:16 63:17 | 97:9,15 | 179:10,16,22 |
| 259:20,24 | 201:2 202:1 | 99:23 100:16 | 180:5,16 |
| **notice** | | 102:8,17 | 181:11,17 |
| 249:11 | O | 103:19,23 | 186:25 188:9 |
| **noticed** | | 104:4,13 | 189:5,11 |
| 172:4 | **O'CONNOR** | 105:1,9 | 190:1 191:8 |
| **noting** | 55:17 61:15 | 106:2,11 | 192:10,17,25 |
| 67:19 | 63:25 166:19 | 107:9,14,18, | 194:1,9,19, |
| **November** | **oath** | 24 108:17,25 | 24 195:12 |
| 120:3 | 93:17 | 109:7,19 | 196:18 |
| **nudge** | **Obama** | 110:23 111:5 | 198:21 |
| 204:21 | 117:14,21 | 112:14,25 | 200:21 201:4 |
| **number** | 118:12 | 113:7,12 | 203:2 |
| 14:23,25 | 171:13 195:1 | 114:10,21 | 204:13,23 |
| 17:25 18:14 | **object** | 116:5,21 | 205:5 207:3 |
| 26:25 31:21 | 8:17,21 10:7 | 121:10 | 208:8,14,20 |
| 40:19,21,23 | 11:9 14:11 | 122:1,10,16, | 209:6 |
| 63:17 78:6, | 15:18 16:3 | 24 123:9,14, | 211:14,20 |
| 8,11 80:3 | 19:22 20:2, | 21 124:2 | 212:18,25 |
| 84:6 86:2 | 13 22:2,23 | 125:14 | 213:10,15,20 |
| 106:8 141:16 | 23:10,15,24 | 126:7,20 | 214:4,10 |
| 191:9 205:12 | 28:8 29:8, | 127:10 128:3 | 215:7,23 |
| 216:20 217:8 | 14,19 33:8, | 129:14 | 216:9,23 |
| 218:3 | 14,20 35:5, | 130:7,14,20, | 218:7 219:6 |
| 234:14,15 | 17 36:10,16 | 25 131:19,23 | 220:5,11,22 |
| 238:2,10,11 | 37:10,19 | 132:3 134:8 | 221:4,19 |
| 263:11 | 38:6,12 | 135:3,12,23 | 222:3,18 |
| 265:19 | 39:23 40:14 | 137:6,16,25 | 223:12 |
| **numbered** | 41:17 42:24 | 140:12 | 224:7,23 |
| 29:2 | 43:22 44:11 | 142:7,13 | 225:23 |
| **numbers** | 49:3,23 | 143:1,10,23 | 226:22 |
| 9:4 99:17 | 50:3,15 51:5 | 145:12 150:8 | 227:4,9,19, |
| 100:12 103:6 | 52:8 56:11 | 153:25 154:8 | 25 229:4 |
| 116:15,25 | 58:19 62:5, | 155:3,11 | 230:6 233:1, |
| 118:22 127:5 | 8,14,20 | 156:3,11 | 14,21 235:16 |
| 173:18 195:2 | 63:12,24 | 157:14,16,21 | 236:24 237:7 |
| 205:19 | 65:19 67:23 | 159:9 160:22 | 238:14,24 |
| 232:14 | 70:12,18 | 161:14 | 239:6 241:7, |
| **numeric** | 73:16 74:2 | 162:7,13 | 16 242:1 |
| 18:1 | 77:24 80:8, | 163:22 164:6 | 243:6 |
| **numerical** | 14 81:12 | 165:7,18,23 | 244:14,23 |
| 166:7 216:4, | 82:10 83:1,6 | 166:15,24 | 245:9 246:25 |
| 18 219:3 | 85:1,15 | 167:12,19 | 248:15 |
| **numerosity** | 86:15 87:2, | 169:2,19 | 249:2,21 |
| 67:5,7 68:24 | 19 88:7,19 | 170:2,16 | 250:1 251:9, |
| | 89:8,22 | 175:14 | 21 252:5,17, |
| | | 176:16 | 21 253:6 |

255:16
256:21
257:14
259:22 260:4
262:8 263:3,
19 264:19
265:9 266:2,
10,21 267:8,
18,25 268:22
271:25
**objecting**
23:20
**objection**
21:1 24:4,9
26:23 36:3
85:18 104:18
110:13
111:15 125:6
127:17 132:7
135:16
137:10
142:20
155:21
156:24 158:5
164:17
165:12 166:3
168:11
173:19,22
176:10 179:3
180:12
191:18 192:2
195:25
197:2,11,23
202:3,13
205:22
206:22
217:14
220:17
221:23
222:7,11
228:9 231:4,
13 234:21
235:2 239:15
240:5,6
246:4,18
247:9 249:8,
13 251:15
254:13 258:5

262:17 265:1
268:10
269:9,23,24
270:6 272:6,
9,18,19
**objections**
23:12 109:25
155:16 156:6
206:16
240:14
243:16,24
246:11
268:16
**objective**
166:12,16
253:17
**objectives**
268:8,14,20
**observations**
157:5
177:12,17
**observe**
171:23
**observed**
114:20 218:2
235:4 237:14
**observers**
182:9
**obtain**
268:7,13,19
**obvious**
64:16 274:7
**obviously**
32:12 33:23
120:15 211:9
**occurred**
170:5 178:19
**occurrence**
68:16 69:8
**occurring**
31:25 32:16
35:1,8
**occurs**
83:21 143:19
**odd**
22:8 190:11

**offer**
41:3 82:8,13
88:16 90:19,
21 91:14,17
94:5,15
141:1
145:21,23
157:5 166:6
211:13
**offered**
141:19
143:13 155:7
159:21
166:17
**offering**
220:7,14,19
233:18
234:19 239:3
240:12
241:14,18
242:25
243:2,22
244:19
246:20
252:19,22
253:13,18
**office**
76:24 149:5
156:22
208:13,19
222:17
226:14
**officer**
141:21
143:14
**Officers**
142:1
**official**
204:19
**offset**
138:5 206:6
**Ohio**
147:16
**okay**
7:13 8:3,12,
14 9:10
10:5,11
11:20,23

12:1,10,24
13:3,10
14:4,14
15:16 16:1,
5,9 17:3,10,
15,19 18:2,
9,17,20
19:7,15
20:11,20
21:8,12,18,
23 22:17
23:4,13,21
24:5 25:2,22
27:8,16,21,
24 28:3,10
29:16 30:4
31:8,13,16
32:25 33:5
34:1,22
35:24 36:5,
13 37:16
39:1,20
40:10 41:5,
12 42:15
44:23 45:20
46:19 47:21,
25 48:24
49:5 50:8,
13,20 51:3,
25 52:5,6,
11,20 53:11,
25 54:13,22
55:23 56:20
57:10,25
58:11 59:8
60:14,16
61:3,6 62:2
64:6,18
65:8,12
66:18,22
67:16,18
68:3,4,22
69:2 70:2,9,
14,21 71:13
72:2,5,13,
19,25 73:6,9
74:4,12,22,
24 75:9,23
76:4,5 77:2,

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 11,18,20 | 25 240:12 | 121:23 | 168:16 |
| 78:2,4,13 | 241:3,12,22 | 122:7,21 | 175:17 179:7 |
| 79:3,13,22 | 243:22 244:2 | 123:4 128:4, | 220:8,14,19 |
| 80:10 81:9 | 245:15,23 | 18 134:16,17 | 233:18,24 |
| 82:8,15 83:9 | 246:7,20 | 146:10 | 234:19 239:3 |
| 84:3,10,16 | 247:15 | 147:15 | 240:12,16 |
| 86:7,22 | 248:9,18 | 148:10 | 241:13,14,18 |
| 88:4,16 | 250:4 251:2 | 155:22 | 242:25 |
| 89:3,20 | 252:10 | 167:24 | 243:2,22 |
| 90:12 91:13, | 255:4,10 | 168:25 | 244:19 |
| 20 119:14 | 257:1 258:17 | 175:15 | 246:20 247:2 |
| 133:20 145:3 | 259:20 | 178:6,7,14 | 249:16 |
| 151:7,20 | 260:10 | 180:23 | 252:19,22 |
| 152:13,21 | 261:9,24 | 181:24 198:7 | 253:4,13,18 |
| 154:11 160:2 | 263:15 270:6 | 205:25 | 262:14 268:6 |
| 175:1 177:6, | 273:1,13 | 210:25 | **opinions** |
| 25 178:13 | 274:22 | 213:22 | 49:17 82:9, |
| 182:8 187:2, | 275:3,5,16 | 215:11 | 12,24 83:10 |
| 11 190:3 | 276:9,22 | 217:19 218:1 | 90:19,21 |
| 196:22 | 277:6 | 226:23 229:1 | 91:14,17,18 |
| 199:15 | **Olson's** | 235:6 | 94:10 101:7 |
| 200:25 | 149:5 | 237:15,16 | 145:24 152:8 |
| 202:25 | **omitted** | 240:13 248:9 | 160:14 |
| 203:17,23 | 58:14 169:10 | 254:10,15 | 212:17 |
| 204:18 | **on-the-spot** | 255:4 256:2, | 220:24 |
| 208:24 | 202:17 | 15,23 257:5 | 262:5,21 |
| 209:2,10,23 | **once** | 258:21 | 277:10,14,18 |
| 210:13 | 161:17 261:7 | 259:18 | **opportunity** |
| 211:3,17 | **one** | 272:23 | 53:7 68:12 |
| 212:5 213:5, | 13:20 19:6, | 277:23 | 138:9 146:21 |
| 7 214:25 | 13 25:11 | **one-to-one** | 148:4 149:20 |
| 217:8 218:19 | 27:24 28:14 | 225:17 | 196:25 |
| 219:11,14 | 30:2,13 | **ones** | 201:23 |
| 220:1,7 | 36:11 45:14, | 114:4 174:8 | 206:13 |
| 222:5,14 | 23 46:1,6 | 237:3 271:10 | **opposed** |
| 223:8 | 47:13 49:1, | **opens** | 80:2 86:13 |
| 224:12,16 | 24 59:11 | 194:10 | 195:7 222:1 |
| 225:4 226:1, | 68:15 78:14, | **opines** | 269:7 |
| 9,20,25 | 18 89:12 | 144:15 | **opposing** |
| 227:6 228:18 | 95:13 96:8, | 153:18 | 73:2 164:10 |
| 229:1,14,23 | 25 97:13 | **opinion** | 255:8 |
| 230:18,25 | 98:21 100:1, | 48:25 49:20 | **opposite** |
| 231:10,16,25 | 2 101:14,24 | 51:19 56:15, | 164:9 198:4 |
| 232:13,23 | 109:24 110:9 | 17 58:15,20 | **optimizing** |
| 233:18 234:8 | 112:7,20,24 | 63:21 64:6 | 271:2 272:4, |
| 235:22 | 116:11 | 84:24 89:20 | 11 |
| 236:8,12,14, | 117:6,17 | 94:5,15 | **oranges** |
| 21 237:4,13, | 120:11 | 145:21 | 44:20 |
| 24 239:2,21, | | | |

Sean P. Trende
September 02, 2022

order
  129:12
  138:15 177:3
  185:24
  192:19
  196:14
  198:16
  217:11 233:7
ordered
  30:21
organizations
  150:21
origin
  169:17
originally
  261:2
outcome
  108:12,20
  207:5 255:23
  256:25
  263:17
outcomes
  14:25 195:7
  231:24
  241:21
  262:15 264:1
  269:22 270:3
outgrowth
  177:23
outlier
  28:1 33:12
  36:20,21
  40:8,12
outliers
  36:7,9,14,
  23,24 37:14
  38:2 40:6
outline
  185:24
  262:21
outlined
  168:17
outnumber
  170:1
output
  17:23,25
  22:18,21,22

  23:3 149:22
outputs
  21:16,20,22
  23:5,23
outreach
  118:9
outside
  38:20 50:1
  87:22 156:1,
  9 157:12
  158:4
  159:15,19
  162:16
outweighs
  57:5
overlap
  94:21
overlaps
  28:6
overlay
  154:3 157:4
overrule
  156:24
overwhelming
  76:19
overwhelmingl
y
  41:11 144:12
  267:3

————————

P

————————

p.m.
  93:2
package
  10:16,19,20
  12:17,18
  15:9 34:16
packing
  243:20 245:3
  272:2,10
packs
  271:24
page
  9:11,14
  10:12 16:12
  26:10 27:8

28:11 29:22
31:18 35:19
37:1 52:5
59:8,23 60:9
66:1,13
70:21 72:12,
13 74:11,19
75:3,10,13,
23 76:2
83:3,9 94:25
95:2 98:18,
21,23,24
99:4,9,11,
19,25 100:1,
2,14,18,25
101:8,20
105:18,19
106:1 112:1,
2 113:16,18
118:1,3,4,21
119:1,3,6
124:12,14
126:6 128:9
131:2,3
133:20,22,25
135:25 136:2
138:15,16
141:14
144:17
145:3,8
151:3,10,21
152:6,7
154:11,12,
13,17
158:14,20,21
159:23
160:19 170:6
171:3 172:1,
9,23 174:3
175:2,21
177:7,24
178:14
182:20
183:24
185:14,20
186:1,7,13
187:2,3,7
188:12
209:14,16

212:10
214:15
218:12,22
221:6
223:16,18,22
229:14,15,24
231:16
232:13 234:9
235:4,24
237:14,25
239:3 240:20
242:9 244:3
245:16
247:21
248:9,10
251:12
260:11,15
263:6 264:1
270:17
273:1,2
274:1 275:3,
4 276:1
pages
  59:16 98:20
  106:21 119:1
  135:10,15,21
paint
  132:8
paper
  14:2 20:15
  131:12 132:4
  182:16,23
  183:9,16,20,
  25
paragraph
  10:13 31:18
  56:25 57:9
  68:5 70:23
  72:15 74:11,
  19 76:1 95:2
  99:9 113:18
  118:3,4,6
  120:13,14
  124:16,18
  126:5 128:11
  131:5,6,7
  144:23
  151:10

Sean P. Trende
September 02, 2022

170:8,12
172:4,5,13,
14 174:2
175:5 176:3
177:25
187:10
209:15
214:16
223:22 230:1
263:5,13
264:2
270:18,21
274:3,21
275:21
276:2,23
**paragraphs**
75:4
**parameter**
14:12,15,16,
20 15:7,13,
21 24:7
**parameters**
12:25 13:4,
12,25 14:5,6
15:23 16:1
17:11,13
20:7,19
21:3,18 25:3
**parent**
20:7
**parenthetical**
116:14,23
**parkland**
78:16
**part**
9:2,5,12
12:12,17
56:5 58:14
76:2 100:14
117:3 118:8
151:7 154:22
159:6 171:21
172:18
173:4,8,16
186:12,13
199:4,16
212:23
213:14 214:7

220:25
227:18 228:7
249:19,24
250:15,16,
17,19 251:19
272:24
**participation**
206:9
**particular**
18:6 24:24
77:13 102:22
108:11
145:23 151:9
161:21
194:15 195:8
222:16
225:20 228:7
249:24
**particulars**
85:20 86:16
124:11
**parties**
194:13
266:14
**partisan**
15:6,10 17:4
24:1,6 26:2
29:17 36:8
38:11 57:4,
20 58:12,16,
21 59:1
89:7,21 90:1
113:22
114:13,24
123:17 192:8
193:23 204:2
243:4 244:21
245:5 246:23
252:15
253:17,19
268:8,14,20
270:20
**partisanship**
24:7 26:3
38:15 40:12,
13 83:18,25
87:23 89:17
102:5,12,14,

15,19
123:13,20,25
264:17
**parts**
82:7,16
161:1 202:25
**party**
17:4,8 29:6
117:3 124:25
125:5,18
176:2 177:12
178:17 179:7
180:20
181:22 186:9
214:23 215:2
216:7,16,22
217:7,13
254:5 255:6,
8 256:23
257:10
264:24 265:7
266:8 267:7,
14
**party's**
217:22
256:24 257:7
**Paso**
96:18,22,25
104:3,9,11,
15 184:18
185:9 203:18
**pass**
150:10
207:10 258:9
**past**
47:20 105:5
121:14 135:2
195:10
208:6,12,18
250:21
**patience**
150:23,24
**patterns**
104:1 122:25
195:9
**Paul**
51:7 207:19

**pedantic**
32:9 138:2
**peer**
49:9,13,21
50:5,19
**peer-reviewed**
50:7,9,10,
14,24
**penalties**
93:17
**people**
40:16 49:2
50:25 61:10,
22 78:15,23
79:6 89:16
101:12,23
129:2 136:9,
10 164:3,10,
14 165:21,24
166:1,4
169:10,11
182:2,4
191:11 210:5
215:9 255:12
**Perales**
150:11,17,19
157:21,23
159:11,13
173:20
176:14
178:25
193:8,11,17,
19,20 200:8,
10,11
207:10,20
256:12
**percent**
12:8,9 26:20
28:4,5,23
29:25 30:10,
14,16,19,24
31:4,6,7
39:6,15,17
41:20,22,25
42:6,10,13
43:8,11,14
44:17 46:10,
13,14,23

Sean P. Trende
September 02, 2022

47:1,3,9
48:7,13,20
54:7,8,9,11
66:24 67:1,
3,9,12,22
68:15 69:9
71:7 77:4
78:24 79:9,
11 83:23,24,
25 84:5,6,18
85:4,5,7
87:13,15
116:3,19
118:11,12
122:14,18,19
123:6,8
124:6
146:23,24
148:23
158:11
169:22
172:21 173:7
174:5,6
187:18,21
188:22,25
189:4 190:11
192:15,19
198:5,9,10
205:9,10,19
215:12 216:7
218:2 224:5,
6,13,14
225:3,6,7,9,
10 230:19,20
231:3,12
233:11
235:7,9,11
237:16,17
240:2 241:10
242:21
246:2,10,16
247:6 248:5,
7 259:8
260:6 264:13
**percentage**
28:24 219:14
232:21 236:5
238:20
239:22 241:1

242:15 248:1
**percentages**
79:4 233:11
244:9
**percentile**
34:2,19
**Perez**
137:7 204:6,
16,20 205:16
**perfect**
130:4 141:20
143:13
167:1,2
**perfectly**
128:13
129:11
130:5,12
168:19
247:17 274:8
275:11,12
**perform**
10:5 25:15,
16 187:13
188:18
189:21
**performance**
25:21 87:16
172:7,17,20
173:13
196:3,8
205:21
218:15 219:7
222:15,16,19
226:13,15
227:13,15
229:13
231:15
240:8,18
247:3,5
249:18
253:19
**performances**
121:19
**performed**
40:25
**performing**
171:10
189:13

**peril**
201:21
**period**
195:19
**permanent**
256:4
**Perry**
100:6 206:19
**personal**
168:16
213:12,17
214:1
**perspective**
19:5,8 99:14
100:9 162:5
**phenomenon**
224:20
**phrase**
13:8 53:6
106:15,16
143:4 219:22
**phrased**
18:3 86:19
219:13
262:19
**phrases**
106:5
**phrasing**
108:5
**physical**
65:6
**pick**
218:3
**picked**
175:4
**picks**
273:22
**picture**
175:1 195:21
**pile**
81:2
**pizza-mander**
259:16
**place**
25:7 105:22
106:22
107:11,20

132:14
248:11 252:8
**places**
52:2 122:4
132:20
169:24
264:15 265:6
268:25
**plainly**
275:24
**plaintiff**
7:9 128:7
**Plaintiff's**
7:18 9:11
69:15 81:22
98:9 115:1
117:9 119:18
139:8 140:19
146:2 232:3
250:7 254:20
**Plaintiffs**
155:8 210:22
211:19
212:2,8
**plaintiffs'**
104:20
152:9,14,18
160:7
**plan**
8:8 18:2
27:22 29:5
31:21 33:6
35:3,13
36:1,8,14
39:4 40:20
42:19 44:1,
3,7,8,12,15,
17,20 57:2,
15,22 58:7,8
66:18 68:6,
8,25 70:24
72:3,16,19
84:24 85:12
89:25 94:5,
15,18 138:18
145:21 155:9
156:1 160:4
194:15

213:9,13,18
214:3 221:1
227:1,7,18
228:8 229:16
231:18
232:17
234:11,25
235:25
240:22
242:11
244:4,12
245:17
246:23
247:22
249:20
250:13,15,20
251:8,13,25
252:8 253:1
**Plan's**
 57:18
**planning**
 155:6
**plans**
 18:18,19
 19:25 20:21,
 24 21:4
 29:7,10
 33:7,12,17,
 22,23,25
 35:14 36:7
 38:10,14,15,
 20 41:8
 42:18,20
 44:4,9,16,17
 52:1,3,7,10
 57:17 66:14
 70:10,15
 84:4 87:23
 145:23 156:4
 177:13 179:8
 181:8,10,15
 218:3,14
 249:7,12
**play**
 173:7,10,11,
 17
**played**
 125:12

127:25
129:13
144:11
216:24
**playing**
 146:19
**please**
 10:22 66:16
 94:25 99:8
 105:18
 112:1,2,3
 113:16,17,19
 115:19
 118:1,2,6,13
 120:13
 124:12,15
 128:9 131:2,
 3,4,6
 133:20,21
 135:25
 141:14,15,17
 143:12
 144:17
 150:13 151:3
 209:15
 214:16
 218:13
 223:17
 228:14
 229:15
 232:15 234:9
 235:23
 237:13
 240:20 242:9
 244:3 245:16
 247:20 250:5
 260:11
**plot**
 169:15
**plotted**
 169:5
**plotting**
 26:21 169:6
**plurality**
 275:7
**point**
 36:17 40:4
 44:13 71:14

82:6 117:2
130:8 151:8
166:7 173:12
184:3 191:12
202:5 216:14
217:20
239:22
255:19
263:23
274:18
277:22
**pointed**
 127:3
**points**
 9:16 10:1
 28:24 71:3
 91:6 151:23
 158:15,16
 160:24
 169:21
 171:13
 209:18,24
 210:3,14
 211:8 219:14
 235:6
**polarization**
 69:23 105:16
 198:1,3,24
**polarized**
 103:11 188:3
 189:17
 197:7,17
 198:6,20
 199:3,16
 269:14
**police**
 141:21
 143:14 144:7
**political**
 8:10,13
 12:14 20:17
 28:21 36:20,
 24 37:14,15
 38:2,22 40:6
 63:3 86:14
 88:11 90:4,
 16 107:4
 108:21

109:5,9
110:5,18
111:11
124:21,24
125:2,4,18
126:16
127:4,5,8,
14,21,22
133:24 164:8
182:9 205:20
207:5
214:19,22,25
215:17
216:6,15,21
217:6,12,23
220:10,21
221:17 222:2
223:2 229:8
238:17
242:24
243:13
259:21,24
262:15
263:17,25
268:8,14,18,
20 269:21
270:2,14
274:8 275:25
276:7,8,10,
14
**political-
neutral**
 30:2
**political/
racial**
 126:11
**politically**
 29:18 31:9,
 14 43:17
 89:13 273:4,
 8,10,16,19,
 22
**politics**
 8:11 25:10
 31:1,3
 35:19,20
 36:18 37:14
 38:5 40:5

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 41:1,13 | **population** | **portions** | **practicing** |
| 42:8,12,25 | 14:20 15:11 | 145:19 203:9 | 156:20 |
| 86:6 87:6,9, | 46:23 48:6 | 273:5,23 | **preceding** |
| 10,18 88:3, | 54:7,8,10, | **positioning** | 60:9 145:14 |
| 5,10,18,23 | 11,21 55:2,3 | 255:21 | 176:25 |
| 89:2 101:22 | 56:9 59:7 | **possibilities** | **precinct** |
| 104:2,6,16 | 60:10,15 | 191:21 | 46:7 48:1,5 |
| 105:7,23,24 | 71:11,12 | **possibility** | 49:6 75:24 |
| 106:15,23,24 | 78:20,24 | 169:21 202:7 | 76:6,18,19, |
| 107:2,12,16, | 79:8,10,14 | 207:1 227:6 | 24 78:14 |
| 20,21,23 | 80:23 89:12 | 241:22 242:3 | 79:1,10 |
| 108:7,23,24 | 95:7,10,12, | 243:11 270:4 | 81:11 |
| 109:3,6,13, | 16 96:1,5,22 | **possible** | 111:13,23 |
| 16,23 110:22 | 97:3,7,22 | 19:16 37:16, | 123:24 |
| 111:3,9,13, | 98:5 99:13 | 22 47:10 | 147:16 |
| 24 117:15,23 | 100:8 101:12 | 48:21,23 | 192:14 |
| 120:1,7 | 103:3 106:10 | 86:19,20,24, | 223:10 |
| 126:1 238:18 | 112:13 | 25 90:7,10 | 272:22 |
| 264:5,8,14, | 121:15 | 113:9,10,14, | 275:24 |
| 23,24 265:7, | 128:24 | 15 121:23 | 276:25 |
| 25 266:7,8, | 129:5,6,12, | 122:7,21 | **precinct-** |
| 16 267:7,14, | 20,23 130:2, | 123:4 150:25 | **level** |
| 21 268:4 | 10,11,18,19, | 157:3 | 46:9 127:1 |
| 270:12,25 | 23,24 136:3, | 164:12,18 | **precincts** |
| 271:20 | 5,6,8,17,19, | 167:8 169:16 | 25:13 48:8, |
| **politics-** | 25 149:18 | 192:22 193:6 | 10,11,15 |
| **blind** | 153:14 | 201:20 234:3 | 76:20,22 |
| 31:23 32:21 | 158:12 | 239:11,17 | 77:5,11,12, |
| **poll** | 166:18,21 | 240:1 241:23 | 21,22 78:3 |
| 45:24 | 167:14 | 245:5 247:5 | 79:4 114:3 |
| **Polling** | 168:19,21 | 259:3 268:7, | 125:24 |
| 175:23 | 169:6,15 | 13,19 269:11 | 131:10,11 |
| **polls** | 170:1 192:18 | 270:15 | 138:16 |
| 9:1 45:24 | 197:16 | **possibly** | 195:17 221:2 |
| 116:9 195:19 | 200:19 | 86:12 109:25 | 223:13 226:7 |
| 196:11 | 202:10 | 167:4 | 233:11 |
| **Polsby-popper** | 205:1,11,18 | **post** | 237:2,11 |
| 57:12 58:6 | 247:7 261:10 | 142:2,11 | 242:6 244:16 |
| 71:19 72:6,7 | **populations** | **potential** | 247:18 248:6 |
| 73:10,13 | 62:25 65:25 | 48:20 123:20 | 271:2,14,15, |
| 74:8 75:6 | 80:4,7,9,12 | 126:17 140:4 | 18,22,24 |
| **Pooja** | 152:10 161:4 | **potentially** | 272:4,16,21 |
| 7:9 | 168:3 241:10 | 86:11 162:5 | 273:24 275:7 |
| **pop** | 263:1 277:3 | 194:17 | **precise** |
| 42:11 | **portion** | **Powerpoints** | 77:25 186:19 |
| **populated** | 29:12 33:2 | 213:23 | 223:8 |
| 117:7 | 39:21 131:12 | **practice** | **precision** |
| | 161:5 178:24 | 170:5 | 46:20 |

Sean P. Trende
September 02, 2022

preclude
  202:7
predict
  198:14
predictive
  222:15,20
  223:10
  225:2,16,18
  226:17
predictor
  223:15
predominance
  270:25
  271:20
predominant
  16:25 24:16
  112:9,22,24
  220:20
  268:21
predominantly
  257:11
predominated
  29:17
preface
  28:19
prefer
  14:24 184:1
  272:13
preference
  193:24 198:2
preferences
  192:8
preferred
  140:10
  187:24 188:7
  189:9 192:23
  196:16,23
  205:4 254:5
  255:25
preliminary
  93:15 208:22
premise
  253:13
  267:12
prepare
  133:4

prepared
  91:14
prepares
  229:20
present
  153:5 155:1,
  9 179:21
  200:4,6
  202:10
  208:6,12,18
  224:21,24
presented
  66:20 104:7
  153:9,24
  155:20 156:8
  158:3,4
presents
  99:13 100:8
  263:25
Presidency
  121:17 144:1
President
  221:17,22
  222:13,19
Presidential
  170:25
  183:10 184:1
  196:8 221:3,
  9
pretty
  22:9 48:14
  56:15 133:15
  146:19
  147:22
  197:15
  202:15
  222:20
  225:12
prevail
  120:23
  121:3,9
previous
  97:18 118:15
  137:21 148:2
  180:10
  185:21
  228:11 237:8

previously
  118:17
  171:12 238:1
primaries
  255:14
primary
  220:20
  254:4,11
  255:24
  256:16,20,
  24,25 257:3,
  7,10,13,21
  258:2,4,7
principles
  58:17
printout
  275:9
prior
  195:20,21,23
  208:4,11,16,
  21 209:2
  218:22
  221:16
privilege
  156:20
privileged
  176:12
probabilistic
  22:12,15
  37:12
probably
  8:9 9:7 12:8
  20:16 42:12
  53:18 56:13
  75:11 91:17
  99:15 100:11
  116:16
  118:20 122:4
  124:9 128:6
  132:19
  136:13 144:4
  149:4 157:16
  162:18,19
  179:12
  217:20
  223:15
  259:11
  276:15

problem
  13:18 45:16,
  18 46:17
  47:8 48:8
  55:15 80:15,
  17 85:7
  99:15 100:10
  104:21 140:5
  163:8 200:5
problematic
  102:1
problems
  45:14
proceeding
  256:3
process
  17:17 18:5,
  14,20 29:18
  30:2 31:8,14
  34:18 35:15
  42:22 79:20
  83:23 86:13
  143:9 171:21
  177:5 208:6,
  12,18 209:4
  212:24
  213:14,19
  227:17,23
  249:25
  251:19,20
  269:19
  270:10
processes
  228:13
produce
  14:25 18:7
  22:4 31:14
  34:17 39:14
  40:5,7 41:9
  46:25 47:9
  79:16 95:17
  234:3 241:20
produced
  34:5 40:18,
  19 41:10
  50:6 248:22
  249:17
  252:23

274:15
**produces**
  20:18 29:24
  30:20,22,23
  31:21 47:19
  50:24
**producing**
  59:3,5
**professor**
  180:23
**proffered**
  211:18
  212:1,7
**profiling**
  141:2 143:19
**program**
  10:14,25
  12:16 15:11
**programming**
  12:7
**programs**
  18:7
**progressed**
  95:3
**project**
  79:25
**projected**
  180:21
**projection**
  101:24
**prominent**
  20:16 178:21
  179:2 194:17
**prong**
  52:14,21
  53:5 56:14
  67:9 167:24
**pronunciation**
  182:6
**proper**
  37:4 84:24
  182:6
**properties**
  18:25 26:1,
  2,20 84:22,
  23

**property**
  24:25
**proposals**
  70:4 141:1
**proposed**
  59:21 62:7,
  19,25 63:10,
  14 69:4
  70:3,24
  71:3,14,23
  72:6,22
  73:24 74:7,
  13 159:14,
  19,22 160:7
  249:12
**proposes**
  74:21
**prospects**
  90:17 229:2
**protected**
  163:1
**protection**
  144:9 206:21
**prove**
  128:5
**provide**
  152:17 161:4
**provided**
  11:12 70:5
  100:18
  116:25
  136:15
  152:23
  153:13
  161:11
  164:24
  165:5,16
  274:23
**provides**
  263:6
**proxy**
  123:12,20,24
**public**
  115:17
  212:21
  213:4,9
  248:24

**publication**
  49:19
**published**
  51:2 120:6
  141:3
**pull**
  34:6 38:21
  100:25
**pulling**
  141:21
  143:15
**purely**
  199:19
**purple**
  114:5 221:12
  236:4,10
  271:1,11,21
**purpose**
  52:6,13,25
  53:1 66:5
  186:6,8
  220:21
**purposes**
  7:19 37:2,3
  53:15 69:16
  81:23 98:10
  115:2 117:10
  119:19 139:9
  140:20 146:3
  167:17 168:8
  215:22 217:9
  230:25
  231:21 232:4
  237:20 250:8
  254:21
**pursued**
  58:16
**pursues**
  57:4 58:12
**push**
  96:12 97:19
**pushes**
  39:17
**pushing**
  42:9,10
  43:13 83:24
  205:1

**put**
  14:10,19,24
  15:7 20:6
  21:21 24:7
  99:13 100:9
  122:2,9
  163:16
  166:19
  175:15 233:6
  246:1 248:18
  256:8 259:10
  262:6 271:12
  272:16
**putting**
  80:1 162:3
**Python**
  11:5,8,13,
  14,21 12:1,3

—————

Q

—————

**qualification**
  68:1
**qualified**
  235:15
**qualifies**
  230:22
**qualify**
  67:8 218:5
  265:3
**qualifying**
  216:5
**quantitative**
  215:20
**quantity**
  264:6,9,15
**question**
  8:23 18:4
  27:4 35:2,22
  42:17 45:13,
  20 46:4
  53:16,18
  61:8 80:25
  84:9 100:17
  106:14
  108:6,10
  111:8,9,17,

19,21 128:20
151:4,20
152:5 153:21
157:2,8
159:10 168:6
189:24
191:13 200:5
201:6,22,24
211:4 213:2
216:19 223:8
227:21
228:15 229:5
235:13 238:1
240:13
241:8,17
243:7
244:15,24
246:5 247:1,
10 248:16
249:3
251:10,22
252:6 253:7,
10,11 255:17
256:17,22
257:15
259:23 262:9
263:20
264:20
265:10
266:3,4,11,
22 267:9,19
268:1,23
272:1
**questioner**
  7:10
**questioning**
  91:1,5,21
**questions**
  31:17 82:13
  90:22,23
  93:9,13,16,
  19 145:24,25
  150:25 151:9
  155:15
  156:5,22
  207:22
  209:11 219:2
  228:10,18

254:1
**quibble**
  215:9 217:15
**quickly**
  133:15
**quite**
  12:21 23:25
  131:10 159:6
**quotation**
  56:15
**quote**
  105:25
  133:25 134:3

————————————

R

————————————

**race**
  16:25 17:4,8
  24:15 35:20
  36:2,18
  37:7,16 38:5
  40:4,9,11,13
  41:12 42:8,
  12 63:9
  83:25 85:13
  87:5,7
  102:13,15
  104:2,6,16
  105:7,23
  106:22
  107:6,11,20
  108:22,24
  109:3,6,16,
  22 110:22
  111:3,9,13,
  24 112:8,21,
  23 113:5
  123:12,18,
  19,24 127:25
  129:13
  141:22
  142:6,12,18,
  23 143:6,8,
  16,21 144:11
  145:10
  163:16
  183:6,10
  187:11 188:8

190:8,24
191:11
201:1,12,21,
25 202:6,9,
18 264:5,8,
14,17,23,24
265:7,25
266:7,8,14,
16 267:6,13,
20 268:4,8,
14,21 269:6,
17,18 270:4,
9,15
**race-**
  31:22 32:21
**race-drawn**
  40:20
**races**
  190:17 191:1
  227:8
**racial**
  36:7,14,20,
  23 38:10
  40:8 41:4
  43:20 57:19
  84:2 86:12
  89:5,15,19,
  21 90:8
  107:1,5
  113:22
  114:14,20,23
  124:22
  125:2,11,20,
  22,24 126:4,
  17,18,23
  127:9,16,24
  135:1 138:10
  141:2
  142:19,24
  143:7,19
  145:5 147:10
  148:17
  149:10,14
  152:24
  153:14 166:9
  204:11
  214:20
  234:22

238:6,12
262:25
270:21
271:17
272:16,20
274:9
**racially**
  35:15 42:21,
  23 44:8
  103:10 188:3
  189:17
  197:17
  198:20
  199:3,15
  267:16
  269:14
**racism**
  142:1
**ran**
  13:23 15:3
  17:3,4,8
  22:17 24:8
  153:2
**random**
  12:12 13:16
**rate**
  22:18
**rates**
  22:21,25
  48:9 161:6
  198:24
**rational**
  141:24
  143:17,21
**rationalizati**
**ons**
  142:2,12
**raw**
  9:19
**reach**
  67:9 170:18
**reaching**
  253:8
**reactions**
  277:12,15
**read**
  16:13 52:17,

24 59:24
66:22 83:7
94:9 101:8
103:6,12,13
106:3,17
112:3 113:17
115:19
118:6,13,16
119:15
124:15
137:7,12
141:17
145:17,20
152:1 160:13
172:16 178:3
204:5,14
205:16
214:23
216:18
218:16 264:6
273:5 277:12

**readers**
39:7 250:25

**reading**
10:18 53:21
99:18 100:18
120:19,23,24
131:7

**reads**
76:5 78:6
214:17
218:14

**real**
120:1,7
258:7

**realized**
204:19

**reask**
248:20

**reason**
11:7,11
76:12 77:10
83:15 93:7
96:8 97:13
99:2 109:18
115:13
117:19,24
120:8,11

132:5 139:24
141:7
146:14,17
165:15,20
253:4,14
256:15
259:15
266:24

**reasonable**
42:1 54:16
71:5 217:22

**reasonablenes
s**
144:10

**reasons**
259:18,19

**rebuttal**
82:25 83:4,5
160:10,14
211:1 232:9
277:7,11,15,
18,25

**rebutting**
276:23

**recall**
9:22 14:9,14
15:3 17:10,
11 55:20
72:12 77:12
101:3 108:5
114:22
148:14 149:8
161:8 183:16
206:6,18
212:4 254:2
261:1 264:12
274:14

**receive**
194:6 260:7

**received**
30:24 34:10
235:7

**recent**
104:1 105:4
121:19
171:11
175:23
222:25

**recess**
45:5 75:20
91:2 92:11
135:8 150:1,
14 207:14
253:23

**recitation**
56:14

**recited**
265:3

**recognize**
7:22 69:19
82:1 254:24

**recollection**
56:4,21
173:23
277:17

**reconfigured**
263:7

**record**
45:6 59:25
61:6 66:3
68:23 75:21
91:3 150:13
200:8,9,10
207:12 211:5
212:22
213:4,9
253:20,25
256:2,3,4
277:24

**red**
29:12 33:2
114:5 165:2,
5,9 213:23
214:2 221:11
271:1,11,14,
21 272:22
273:24

**red/blue**
275:11

**redist**
10:19 12:18
15:9 34:16

**redistricters**
173:25
179:13,19
181:8,14

**redistricting**
10:16,20
18:7 20:15
58:17 61:10,
21 79:7 88:5
129:13
147:5,7,8
160:4 165:3
177:13 179:8
181:2,14
200:3,20
204:22
205:1,13
208:5,12,17
209:4 212:4,
23 213:19
228:12
248:25
249:7,25
250:13
251:20 253:1
261:12
262:14
263:18
270:25
271:20 277:4

**redrew**
181:10

**reduced**
229:9 231:2,
11

**reducing**
197:9

**reelection**
228:3

**refer**
26:24 185:19
260:18
263:10
274:11

**reference**
38:25 52:25
53:22,25
56:19 134:9
178:10
185:15 199:8
260:25
270:23

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **referenced** | **region** | **rely** | **repeating** |
| 147:11 | 95:21 152:11 | 9:19 10:14 | 260:22 |
| **references** | 159:1,20 | 50:25 253:7 | **rephrase** |
| 58:5 | 170:15 | **relying** | 84:8 166:21 |
| **referencing** | **regional** | 9:22 | **replace** |
| 137:20 | 269:6 | **remainder** | 122:5,12,18 |
| 271:16 | **registered** | 110:17 | 123:2,7 |
| **referred** | 221:25 | **remaining** | 229:10 |
| 13:5 53:24 | **regression** | 110:11 185:9 | **replaced** |
| 158:8 | 9:4 47:4,5, | 271:1,11 | 123:2 |
| **referring** | 16,19 193:22 | **remarked** | **replying** |
| 27:3,20 | 194:3 199:7 | 181:25 | 115:21 |
| 28:16 38:24 | 225:11 | **remarked-upon** | **report** |
| 53:1 58:2 | **regret** | 178:15 | 7:25 8:1 |
| 77:5 99:21 | 173:6 | **remember** | 9:12 10:4,12 |
| 101:2 | **regrettably** | 54:25 55:24 | 11:2 16:12 |
| 106:19,20 | 155:12 | 58:5 98:3,4, | 19:2,4 22:25 |
| 107:8 113:23 | **regular** | 7 109:1 | 23:1,11,20 |
| 128:15 | 9:5 | 125:22 | 26:11 29:21 |
| 134:2,12 | **regularly** | 148:7,16 | 36:22 52:2,6 |
| 170:17 | 12:5 | 190:5 202:23 | 58:4,5 59:17 |
| 171:17,20 | **relate** | 206:8 277:9 | 66:2,21 |
| 205:11 | 57:25 135:21 | **remind** | 69:22 70:5, |
| 261:13 | **related** | 93:16 | 7,11,16,22 |
| 274:10,25 | 35:7 181:13 | **reminded** | 74:12 75:11, |
| 275:18 276:5 | 209:12 | 148:16 | 24 82:6,9, |
| 277:1 | **relationship** | **remove** | 16,25 83:4,5 |
| **reflect** | 157:10 158:2 | 121:24 | 87:11 88:11, |
| 38:22 145:7 | 168:23 268:4 | 122:4,8,22 | 16,19,22 |
| 221:12 | **relationships** | 123:5 | 90:14,18 |
| 256:16 | 265:20 | **renders** | 91:15,19 |
| **reflected** | **relevant** | 53:19 | 93:23 94:2, |
| 221:8 239:4 | 62:10 73:14, | **renewed** | 3,6,9,12,13, |
| 241:4,25 | 18 94:10 | 47:13 | 16,20,22 |
| 251:6,18 | 127:6 156:17 | **rental** | 95:19 96:16 |
| 252:2,11 | 161:23 | 161:6 | 103:11,13,14 |
| **reflects** | 177:22 | **Reock** | 105:12,19 |
| 119:2 240:25 | **reliably** | 55:7 64:23 | 106:18 |
| 242:15 244:9 | 189:15,21 | 65:5,10 | 107:25 |
| 245:21 248:1 | 228:23 | 71:16,19 | 108:1,6 |
| **reform** | **reliant** | **repeat** | 109:17 |
| 194:15 | 120:17 | 27:4 39:2 | 113:17 |
| **refresh** | **relied** | 65:16 150:25 | 124:13 |
| 277:25 | 9:13,17 10:2 | 153:20 | 125:7,21,23 |
| **regarding** | 16:16,22 | **repeatedly** | 126:19 |
| 156:7 158:1 | 164:23 | 228:13 | 127:7,14 |
| 175:18 | 212:11,16 | | 128:10 |
| | | | 130:15 |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 132:23 | 13,16,19,20 | **representativ** | 188:6,15,20 |
| 133:4,8,12, | 261:14,25 | **e** | 190:7,13,18, |
| 21 135:10,21 | 262:6,21 | 20:12,18,20, | 23 191:2 |
| 136:1 | 264:12 | 23 186:9 | 192:8,24 |
| 138:11,21 | 267:15 | **represented** | 193:24 |
| 145:17,22 | 269:18 | 11:8 29:11 | 194:6,22 |
| 151:3,22 | 270:9,11 | **representing** | 195:10,23 |
| 152:18 | 273:2 274:2 | 207:7,8 | 198:9 214:22 |
| 153:5,6,8, | 277:1,7,11, | 231:18 | 215:2 216:6, |
| 10,18,19,23, | 15,19,25 | **represents** | 16,22 217:7, |
| 24 154:3,7, | **report's** | 27:21 34:2 | 13,22 218:4, |
| 23 155:1,2, | 206:25 | 36:9 59:9 | 15 219:3,7, |
| 20 156:2,8 | **reported** | 229:19 236:5 | 24 220:10, |
| 157:7,11 | 75:6 186:15 | **Republican** | 16,21 |
| 158:3,4,9, | **reporter** | 24:12,14,17 | 221:21,24 |
| 18,20 | 98:13 139:12 | 28:22,24 | 222:16,23 |
| 160:10,15, | 146:6 232:1 | 29:6,9 30:1 | 223:11 |
| 16,18,24 | **reports** | 39:11 41:6 | 224:4,18 |
| 161:1,5,9, | 82:4 94:22 | 43:16,25 | 226:3,13,17 |
| 11,12,23,24 | 102:10 | 44:2,10 | 227:13,15 |
| 170:7 175:3, | 103:12 | 46:22,25 | 229:2,13 |
| 21,22,25 | 134:17 | 83:21 84:19 | 231:6,14 |
| 176:6,7,8, | 136:20 | 85:10 86:8 | 234:1 237:21 |
| 18,22 177:1, | 151:23 | 90:16 97:23 | 240:7,18 |
| 3,8,12 | 155:10 | 98:6 112:5, | 241:13 |
| 182:16 186:2 | 156:10 | 6,12,18,19 | 242:24 |
| 190:3 204:1 | 157:5,13 | 115:24 | 243:4,12 |
| 209:23 | 160:21 | 116:8,19 | 244:21 245:5 |
| 210:3,8,11, | 161:2,12 | 117:3 118:9 | 246:22 |
| 13,17 211:1, | 162:6 164:24 | 121:24 | 247:3,5 |
| 4,6,7,13,17 | 165:15 | 122:8,11,14, | 249:18 |
| 212:6,10 | 209:19 | 19,20,22 | 252:15,24 |
| 214:15 | 210:21 | 123:5,8,11 | 259:13 |
| 215:22 | 211:16 | 124:10,24 | 265:19 |
| 216:18,25 | **represent** | 125:5,18 | 266:13,20 |
| 217:9 218:12 | 7:9 129:1 | 132:10,19 | 272:23 |
| 223:17,18 | 136:2,9 | 171:15 | 273:19 |
| 225:19 | 150:19 233:3 | 173:5,15 | **Republican-** |
| 226:21 227:2 | 238:10 | 174:1,8,11 | **leaning** |
| 228:20 | 258:15 | 175:10,13,19 | 41:9,15,21 |
| 229:14 | **representatio** | 176:1 | 42:18,20 |
| 230:25 | **n** | 177:11,19 | 43:9,15 44:5 |
| 231:22 | 15:24 236:10 | 178:17 | **Republicans** |
| 232:9,11 | 238:21 | 179:7,9 | 28:12 41:19 |
| 234:8 237:20 | **representatio** | 181:9,21 | 117:4 |
| 238:10,20 | **ns** | 185:16 | 120:16,22 |
| 246:21 | 59:17 104:19 | 186:2,14 | 121:3,9,16, |
| 252:20 | | 187:5,16 | 21 123:7 |
| 260:10,12, | | | |

| | | | |
|---|---|---|---|
| 130:3 171:5, 10 172:25 173:6,8 175:4 216:2 222:1,12 223:5,14,24 224:3 225:24 257:20 263:23 | 209:18,24 210:3,14 260:12 | 21,25 209:2, 13 | 39:22 44:4 48:18,19 50:9 52:3,18 55:4 57:12 59:10,21 64:14,20 65:1,6,7,15 66:8,11,16 67:22,25 68:25 70:17 71:21,22 72:3,4,10 73:15,25 74:3,4,10 75:7 77:5 81:11 84:7 86:1 87:1 90:1,5,8 91:15 114:18 135:7,19 152:4 153:15 159:25 162:18 172:20 173:3 174:14,18 177:8 178:17 182:11,19,20 184:2 185:4 186:16 187:1,9 188:14 191:24 192:1 203:21 204:4,6 208:3 218:9 226:16 229:21 230:5 231:23 234:6 235:9 236:14,16 246:9 252:22 259:1,6 260:6 261:16,18 263:5,9,22 264:2,6 267:12 269:5 270:7,17 271:18,19 |

**responded**
82:7,16
158:17

**return**
168:17

**respondents**
183:13,17

**revealed**
127:2

**responding**
58:4 130:16
158:15
211:4,13

**reversed**
144:8

**Republicans'**
263:8

**review**
10:9 11:13,
16,20 49:10,
13,21 50:5,
19 52:9
66:16 69:25
76:1 82:6
140:25
141:3,8
160:10

**require**
48:15

**responds**
211:6

**required**
53:6

**response**
58:7 82:4
94:23
101:15,16
134:11 206:9
261:2,3,6
277:10,18

**requirement**
53:11 64:8
65:3,25

**reviewed**
11:23 49:14
82:15 88:13
119:11
210:8,10,17,
20 211:1,25

**requirements**
168:21

**responsive**
211:9 260:19

**requires**
52:21 65:10,
17 168:8

**rest**
32:8 33:6
106:7 206:14

**reviewers**
49:15,16

**reread**
144:4

**restrictions**
163:24

**Richard**
51:10

**residents**
97:18 103:2
124:8 128:13
130:5,6
174:3,4,7,9,
24 230:2,5
238:11 273:4

**result**
191:15 197:9
217:24
241:15
242:24 243:1

**Rick**
100:6

**right**
7:14 9:17
11:25 12:20
15:17 16:2
17:5,17,23
18:11,12,18,
25 19:1,5,9,
12 20:9,10,
22,25 21:19
22:12,13
23:17,23,25
26:16,21,25
27:6,10,11,
14,22 28:1
29:2,13,18
31:11 32:13
36:9,15,17
37:18 38:8

**respect**
23:9 28:4
30:6 31:1,3
36:2 39:1,
10,25 42:12
45:15,17
74:8 90:15
96:24 173:24
182:22
187:11
266:14

**results**
23:14 79:17
182:10
190:15 205:2
221:7,9
228:6 256:15
257:12

**retained**
151:12 208:1

**respond**
101:23
102:10
151:23
199:22

**retaining**
227:24

**retention**
207:25
208:4,11,16,

Sean P. Trende
September 02, 2022

273:2,6,25
277:6,9
**right-hand**
242:13 244:7
245:19
**Rights**
25:12,14,17,
20 53:5
110:1 137:23
138:4 162:22
163:1,18
199:17
200:15,18,23
202:8,12
262:16
**Rio**
178:21 179:2
182:14
203:12
**rise**
112:8,21,23
113:5 206:21
**risking**
81:1
**river**
78:16
**Robinson**
254:8
**Roden's**
145:17,22
**Roe**
194:16
**Rogan**
94:6
**role**
125:12
127:25
129:13
**roll-off**
191:16 192:1
**Romney**
196:2,3
**ROSENBERG**
92:3
**roughly**
26:9 234:3

**round**
180:10,22
**row**
16:9
**rule**
24:20 37:7,
12 86:23
90:6 156:6
157:17
176:11 227:6
241:22 242:3
243:11
269:18
270:9,15
**rules**
7:14 155:16
270:3
**ruling**
24:18 64:12
206:8
**run**
11:1 17:22
18:9 20:18
22:5 182:23
243:19,20
245:2
**running**
15:14 18:10,
15 226:3,6,8
**runs**
250:21
**rural**
131:10,11,
15,21 132:2,
9 134:23
**Ruy**
101:13,16

---
**S**
---

**S-A-C-H-S-E**
132:21
**S-T-A-R-R**
182:5
**S-T-A-T-A**
12:9

**Sabato**
117:16
**Sachse**
132:20
**safe**
215:5,21,24
**safeguarded**
263:8
**sample**
13:15,22
16:17 19:12,
16,20,24
20:9,11,19,
20,23 22:1,6
**samples**
19:14
**sampling**
13:20 14:3
**San**
96:18,22,24
97:3,7,13
104:17,23,24
105:3
170:13,14
184:18
203:8,14
**Sarlin**
115:21
**satisfy**
52:14 167:24
168:20
259:14
**saying**
24:6 30:5
31:8 35:24
43:20 54:22
58:7 60:3
76:17 84:16
107:22
108:11
112:15,16
116:25
143:18
183:16
263:22 272:8
273:18,21
**says**

7:5 16:14
28:12 29:23
52:13 57:2
59:25 88:11,
22 90:14
99:11 100:4
107:11
134:17 144:6
147:1 172:6,
14 183:25
230:1 232:16
246:9 260:15
263:14 264:3
274:21
**scale**
54:24
**scenario**
87:14
113:10,14
145:15
168:12,22
169:23 170:3
197:13
198:15,23
218:1,2
255:25
271:13
**scenarios**
67:15 147:14
**scene**
195:24
**scholarship**
109:17
**school**
140:24
**science**
8:10 20:17
109:9
**scientists**
109:5
**scope**
90:18 151:10
209:12,16
**score**
54:15,23
55:1,7 64:23
65:5 71:19
166:8

Sean P. Trende
September 02, 2022

scores
  57:12 58:6
  65:10 71:16
  165:10
scratching
  185:23
Sean
  7:3,25
  258:15
seats
  28:13 150:12
  215:3 223:24
  227:24
second
  10:13 16:13
  52:11 66:22
  68:5 71:6
  72:14,15
  95:2 101:18,
  20 105:19,20
  106:12
  131:5,6
  152:7 154:13
  176:3 177:25
  180:22
  187:10
  223:22 230:1
  263:5,13
  264:3 274:1,
  20 275:22
  276:1 277:23
second-most
  20:16
second-to-
last
  72:14 118:2
  128:14 152:2
  209:17
second-to-
the-last
  95:1 118:5
  128:10
seconds
  250:3
secret
  45:18
section
  9:14 110:2,3

132:23
141:18
159:24
175:22
176:5,6,15,
20,24,25
177:6,16
185:22
212:11,12,14
260:12
262:16
sections
  134:15 176:8
  177:1,8
  260:18
see
  9:13 11:17
  13:9 14:8,13
  15:8,9,22
  17:14 21:10
  30:4 33:3
  34:8 39:3
  57:7,8 68:17
  69:5 72:17
  99:10 120:19
  145:1 149:23
  151:17
  154:19 162:9
  163:1 165:10
  170:3 174:20
  175:3,6,22
  176:2,23
  178:1 181:13
  182:4
  186:12,22
  187:6,9
  189:16
  190:17,23
  191:2 193:9
  197:13
  198:22
  201:1,25
  202:6,9,18,
  19,21 209:21
  211:10
  212:12
  226:19
  232:16,19

235:24
236:6,14,18
240:20 241:1
242:10,13
244:3,8
245:10,16,20
246:12
247:21,24
248:10
250:24
255:15
259:14
269:16 273:3
274:24
275:8,17,18,
24 276:3
277:7,25
seeing
  64:11 274:14
seeking
  63:15
sees
  100:23
seesaw
  197:17
segregated
  233:16
selected
  32:24 219:4
self-report
  183:6
senate
  66:6,9
  121:16
  151:14 190:9
  200:13
  222:21
  223:19,24
  224:17,18
  242:10,18
  244:4,12
  245:6
  262:15,23
senator
  196:3 224:6
  225:6
sense
  11:18 19:23

28:7 40:17
55:10 103:7
164:18
193:15
211:11 264:1
sensible
  43:6
sentence
  10:13,18
  16:13 28:12,
  18,19 31:19
  32:4,11
  52:12,24
  53:1 56:17
  57:2,7 58:12
  59:24 66:22
  71:13 72:15
  76:5 78:5
  95:2 99:10,
  11 105:20
  106:3,4,5,7,
  13,17 112:2,
  11 113:18
  114:9 118:3,
  6,14,15,16
  120:20
  124:15 126:5
  128:11,14,16
  131:8 133:22
  144:25
  145:14
  151:21 152:2
  171:4,18
  172:6,15
  175:5 177:25
  178:13,24
  209:17
  214:16
  216:11
  218:13,20
  219:12,18,23
  260:15
  263:12,14
  264:3
  274:18,21
  275:22 276:1
sentences
  32:14 56:18

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| 57:7,8 101:1 | shakes | shed | 243:4 252:24 |
| 141:17 | 55:25 | 126:13 | short |
| separate | shape | shift | 185:15 |
| 67:21 | 53:23,24 | 176:1 178:16 | 204:19 |
| separately | 55:2 65:5,6 | 181:21 193:2 | short-ish |
| 59:21 | 71:20,21,22, | shifted | 261:6 |
| separating | 23 166:17 | 193:23 | shortly |
| 234:4 | shaped | 195:17 | 186:21 |
| September | 54:4 | 261:12 263:2 | show |
| 93:1 | shapes | 277:4 | 36:23 37:13, |
| Sequential | 63:2 | shifting | 25 38:1 |
| 10:15 12:11 | share | 175:13,19 | 143:7 267:15 |
| series | 15:6,10 | 177:11 192:8 | 270:11 277:3 |
| 18:8 | 19:5,8 27:6, | shifts | showed |
| SESSION | 9 29:6 31:7, | 261:10 | 36:22 189:18 |
| 93:1 | 11,15 35:13 | shine | 219:17 |
| set | 43:14 46:21 | 42:7 | showing |
| 8:3 13:25 | 47:1,7 60:24 | shoehorn | 112:4,5,17, |
| 14:4,7 15:10 | 77:23 78:18 | 167:21 | 18 142:19,24 |
| 20:21,24 | 80:21 83:12, | shoot | 161:6 221:1 |
| 81:14 111:18 | 24 84:5,18 | 21:2 | 232:20 |
| setbacks | 100:5 112:7, | shore | shown |
| 263:24 | 12,13,20 | 90:16 | 36:6,14 |
| Sets | 113:4 120:21 | 218:15,19 | 155:2 |
| 9:13 | 121:1,8 | 220:16 | shows |
| settings | 161:9 164:4, | 233:20,25 | 36:12 38:3 |
| 17:12,13 | 15 165:22,24 | 235:18 239:5 | 88:17 162:11 |
| 214:2 | 166:2,4 | 240:1,18 | 163:20 |
| seven | 173:12 | 241:23 | 174:12 |
| 32:23 134:9 | 186:15,16 | 244:20 245:5 | 193:23 |
| seven- | 190:13 | 246:22 | 229:15 |
| district | 216:1,13 | 252:15 | 234:10 |
| 27:12 | 221:12 | shored | sic |
| seven-tenths | 225:22 226:2 | 219:5,8 | 131:13 |
| 172:21 | 227:2,14 | 225:20 | side |
| several | 229:10 | 226:2,12 | 42:12 85:23 |
| 111:16 | 231:2,11 | 231:1,6 | 90:13 198:25 |
| 227:10 | 234:4 238:21 | 239:12,18 | 233:12 |
| 228:10 | shares | 241:13 | 237:11 246:3 |
| shaded | 48:11 126:2 | 243:12 | 247:24 |
| 233:3 275:8 | 225:1 | shoring | 248:22 |
| shading | sharp | 218:24 | sides |
| 232:20 236:5 | 175:25 | 230:22 | 198:5 241:10 |
| 240:25 | 178:16 | 231:14 | 242:21 |
| 242:14 244:9 | 181:21 | 235:15,17,20 | 244:18 248:8 |
| 245:21 | Shaw | 237:19,21 | signed |
| 247:25 | 63:19 64:2 | 239:23 | 151:16 |
| | 90:15 245:2 | 242:5,24 | |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **significant**<br>67:4 110:17 | **sitting**<br>14:9 56:2 | **SMC**<br>10:24 12:10, | 138:1 139:17<br>**sounds** |
| **significantly**<br>70:7 | 91:13 155:8,<br>18 160:15 | 20,22,24,25<br>13:7 14:7,17 | 86:24<br>**south** |
| **similar**<br>110:13 | 211:12,16,<br>23,25 | 17:12 18:12,<br>15,17 20:3,4 | 124:6<br>134:19,23 |
| 129:18,22<br>136:16,24 | **situation**<br>35:22 44:21 | 22:3 50:8<br>**smuggled** | 159:4,8<br>170:8,14,18 |
| 152:6<br>163:11,13 | 49:15 54:14<br>123:20 | 253:12<br>**Snow** | 171:11<br>172:14 |
| 198:11 207:6<br>209:11 | 166:25<br>168:2,17 | 209:5<br>**social** | 177:17<br>179:14 |
| 241:20,21<br>**similarities** | 198:11,13,23<br>199:19 | 265:23 266:5<br>**software** | 184:11,24<br>185:5 192:9 |
| 21:23<br>**Similarly** | 201:10<br>219:19 | 165:3 213:18<br>**solid** | 193:25<br>194:23 195:3 |
| 262:12<br>**simple** | 257:20,24<br>**situations** | 86:8<br>**solidly** | 250:22<br>**southeastern** |
| 78:12<br>**simply** | 18:6 144:21,<br>22 | 43:15 44:9<br>84:19 85:10 | 158:23,24<br>159:2,16 |
| 78:6 110:6<br>141:23 | **six-way**<br>259:15 | **solution**<br>45:23 141:16 | **southern**<br>163:6 174:13 |
| 143:17 145:4<br>153:2 155:8 | **Sixth**<br>134:18,22 | 144:7,10<br>**Solutions** | **spaces**<br>169:18 |
| 186:8 256:6<br>**simulation** | 270:23,24<br>271:10,19 | 141:2<br>**solve** | **Spanish**<br>182:24 |
| 16:17 18:15<br>23:14 31:23 | **skew**<br>89:16 110:4, | 85:6<br>**son** | **spans**<br>184:17 |
| 32:13 104:21<br>**simulations** | 18 257:12,<br>23,25 258:1, | 101:5<br>**sort** | **speak**<br>62:16 |
| 15:14 16:14,<br>20 18:10 | 3<br>**skewed** | 35:21 73:17<br>108:24 | **speaking**<br>42:15 173:1 |
| 31:21 32:18,<br>19 37:25 | 19:21<br>**skimmed** | 109:4,13,16,<br>22 111:12 | 182:9 215:10<br>228:2 259:13 |
| 41:15 66:21<br>138:16 | 160:12<br>**skipped** | 128:13 130:5<br>156:14 | 261:9<br>**speaks** |
| 261:22<br>**single** | 145:14<br>178:24 | 217:18<br>232:14 233:7 | 88:20 107:25<br>125:7 |
| 126:13,24<br>132:14 | 276:15<br>**skipping** | 243:20 268:5<br>**sorted** | **special**<br>175:4,11,18 |
| 243:15 245:7<br>247:7 | 118:8<br>**slate** | 130:12<br>**sorting** | 180:15<br>185:17 |
| **sit**<br>10:3 70:19 | 180:20<br>**small** | 109:6 111:3<br>**sought** | 186:3,4,21,<br>23 188:13, |
| 77:19 83:2<br>158:13 162:8 | 48:14 198:9<br>**smaller** | 28:12<br>**sound** | 16,21 193:3<br>**specialty** |
| 191:21 192:5<br>238:25 | 85:10 | 49:22 50:5 | 8:16 |

Sean P. Trende
September 02, 2022

| | | | |
|---|---|---|---|
| **specific** | 240:6 241:17 | **standard** | 217:19 223:1 |
| 13:8 19:3 | 268:11,23 | 23:4 73:3,5 | 224:17,22 |
| 63:18 64:15 | 269:10 | 74:20 75:1,2 | 228:23 |
| 95:18 103:6 | **Speculative** | 79:5 129:16 | 250:23 256:5 |
| 104:8,15,23 | 164:7 242:2 | 162:21 | 266:7 267:24 |
| 105:2,6 | **Spencer** | 166:7,13,14, | **state's** |
| 109:8 | 210:4 | 16 167:14 | 27:22 29:5 |
| 116:14,22 | **Spencer's** | **stands** | 33:6 35:2,12 |
| 134:7 137:12 | 210:11 | 100:17 | 36:1,6,8,14 |
| 179:6 212:7 | **spend** | **Starr** | 42:19 44:3, |
| 216:4 217:8 | 132:22 | 182:5,10 | 7,8 57:2 |
| 218:3 219:3, | 135:20 | 190:21 | 58:23 72:3, |
| 20 220:2 | **spent** | 191:24 | 7,16,19,22 |
| 228:19 229:8 | 203:11,17 | 192:12,20,21 | 74:1,9 84:24 |
| 241:14 243:3 | **split** | **start** | 85:12 89:25 |
| 244:20 | 75:24 76:22 | 105:20 131:7 | 151:16 |
| 246:21 | 77:1,5,11, | 185:25 | 223:19 |
| 261:16 | 12,21 78:3, | **started** | **state-wide** |
| 262:5,22 | 17 79:4 | 133:15 | 76:24 181:8, |
| 269:7 | 159:1 253:2 | 258:20 | 15 226:14,16 |
| 273:14,17 | 270:13 274:8 | **starting** | 227:8 269:8 |
| **specifically** | **splitting** | 118:14 | **stated** |
| 8:11 63:14 | 191:7,16 | 133:23 | 37:11 |
| 80:24 103:7, | 192:1 242:6 | **starts** | **statement** |
| 20 135:15 | 253:15 | 31:19 78:5 | 35:7 58:22 |
| 173:25 | **spoke** | 131:5 144:24 | 72:24 99:22 |
| 177:24 | 108:16 | **Stata** | 106:1 107:8, |
| 178:1,4,14 | **spoken** | 12:9 | 23 108:12 |
| 179:19 | 181:1 | **state** | 109:9 113:24 |
| 216:17 | **spot** | 11:12 35:19 | 143:18 145:7 |
| 262:20 | 76:21 | 57:4 58:12 | 147:22 |
| 264:21 | **sprawls** | 66:6,9 86:10 | 162:17 |
| 265:13 | 134:19 | 90:17 95:3 | 170:24 |
| **specificity** | **spread** | 111:23 116:1 | 181:20,23,24 |
| 260:9 | 60:7 | 117:6 118:18 | **states** |
| **specifics** | **square** | 120:15 134:7 | 61:19 93:6 |
| 85:3 139:1,3 | 54:4,23 | 151:14 | 110:1 215:3 |
| 148:7 | 65:23 | 157:18 | 222:21 |
| **specify** | 168:18,20 | 160:3,7 | **statistical** |
| 13:19 123:1 | 265:3 | 162:11,18, | 8:15,19 10:5 |
| **speculate** | **staff** | 19,23,24,25 | 12:7 192:7 |
| 161:18 | 179:20 | 163:5,11,20, | 262:5,13 |
| 179:17 | **stages** | 24,25 164:3, | 267:5 274:14 |
| **speculation** | 18:14 | 8,12,14 | **statistician** |
| 89:9 181:18 | **stand** | 167:21 | 10:21 17:16 |
| 196:19 197:3 | 17:20 194:14 | 200:13 | **statistics** |
| 202:17 231:5 | | 206:11 215:4 | 8:24 37:13 |
| 237:8 239:16 | | 216:16 | 141:22 |

Sean P. Trende
September 02, 2022

|  |  |  |  |
|---|---|---|---|
| 142:18,24 | 226:17 229:3 | 156:23 | **sufficient** |
| 143:6,16,20 | 231:7 234:1 | **submission** | 216:8 |
| 144:13 | 237:22 | 49:14 50:18 | **sufficiently** |
| **status** | 252:24 | **submitted** | 24:14,17 |
| 103:1 | **strengthening** | 248:25 | 52:16 53:8 |
| **Staying** | 186:13 | **subsection** | 56:16 63:16 |
| 240:19 244:2 | **strike** | 147:12 | 166:14 201:2 |
| 245:15 | 20:22 53:13 | 202:23 | 202:1 220:3 |
| 247:20 | 73:11,18 | **subset** | **suggest** |
| **stepped** | 211:23 243:1 | 41:5 44:4, | 121:20 |
| 204:17 | 252:12 | 13,16,17 | 142:15 |
| **stepping** | **striving** | 84:4,11,22 | 255:11 |
| 36:5 | 205:20 | 85:10,13 | **suggested** |
| **steps** | **strokes** | 86:8 | 141:25 161:3 |
| 144:24 | 132:9 | **subsets** | 165:13 |
| **sticking** | **strong** | 84:16 | **suggesting** |
| 177:24 242:8 | 67:17 86:4 | **substance** | 68:20 89:1 |
| **stitching** | 105:16 143:7 | 7:15 | 159:7 |
| 152:10 | **stronger** | **substantial** | **suggestion** |
| **stochastic** | 86:1 218:25 | 83:20 217:2, | 141:19 |
| 18:5 | 265:6 | 5 218:5,23 | 143:13 186:8 |
| **stop** | **strongest** | **substantially** | **suggests** |
| 105:25 | 223:15 | 121:13 | 131:12 132:4 |
| 141:24 | **strongly** | 124:23 | 233:7 |
| 143:22 | 227:14 231:8 | 131:15 | **suitable** |
| **story** | 265:4 | 163:13 | 49:18 |
| 28:21 126:16 | **struck** | 214:21 | **summarize** |
| 133:24 | 138:3,8 | 216:14,21 | 173:15 |
| **straight** | 163:13 | 217:12,21,23 | **Summary** |
| 101:22 | **struggled** | 218:20 220:9 | 152:8 |
| 118:10 | 61:11 | 231:8 | **summers** |
| **straight-line** | **stubble** | **suburb** | 203:10 |
| 101:24 | 217:17 | 117:6 131:24 | **supplement** |
| **strategic** | 218:10 | **suburban** | 69:20 |
| 254:3 | **studies** | 117:4 | **supplemental** |
| **strategies** | 42:25 | 131:22,25 | 69:22 70:16 |
| 255:4 | **study** | 132:10 | **support** |
| **strategy** | 41:5 48:24 | **suburbs** | 89:25 95:20 |
| 173:8 254:9 | 183:3 | 41:25 44:19 | 96:17 223:9, |
| 256:14,18 | **stuff** | 95:3,10,13, | 11 224:16,18 |
| 257:11 | 86:20 103:6 | 17 96:5,8,9, | 225:14 |
| **strength** | 105:12 | 12,13 97:8, | 228:23 |
| 171:6,9,16, | **sub-precinct** | 13,14 | 262:14 |
| 19 173:1,17 | 123:18,19 | **successful** | **supports** |
| 177:19 | **subject** | 111:3 | 179:7 |
| 196:15 | 93:17 110:1 | **suffered** | **suppose** |
| 197:10 | 155:16 | 263:23 | 41:3 86:19 |

268:17
**supposed**
  20:4 22:4
  116:22
  178:11
  267:22
**Supreme**
  56:23 61:9
  163:14
  168:1,5,14
  198:4 206:18
  268:3
**supression**
  51:16
**sure**
  15:16 22:9
  26:25 27:3
  39:6,7 45:2,
  4 51:23
  55:13 63:4,5
  70:8 75:17,
  19 103:12,25
  130:16
  133:17
  138:21
  139:20
  141:19
  142:14,22
  143:5,13
  164:11
  169:22
  180:18 182:6
  192:20
  199:18
  200:4,6
  215:10,11,24
  230:9 252:18
  254:18
  255:13 270:8
  271:6
**surge**
  120:15
**surname**
  182:24
**surprised**
  97:1 182:4
**survey**
  9:2 183:5,12

**Susan**
  223:2
**suspect**
  56:22 168:4
  193:7
**suspenders**
  73:8
**swapping**
  124:7
**SWEETEN**
  92:5,7
  199:18
**swing**
  117:4,5
  223:5
**switch**
  75:12 102:2
**Switching**
  255:1
**sworn**
  7:4
**swung**
  95:4,14 96:9
  97:14
**system**
  165:11

────────────

**T**

────────────

**T-R-E-N-D-E**
  124:5
**table**
  83:9,10
**tables**
  134:17
  138:14
  271:14
**tabulation**
  77:8
**tact**
  207:7
**take**
  7:13 25:13
  28:12 44:25
  45:2 48:12
  66:16 75:25
  77:1 90:24

91:23,25
98:2 99:6,17
100:13
115:25
122:17
133:4,18
135:5 136:23
193:12
195:20
206:25
207:8,12
221:7 234:9
235:22
240:19
260:10
265:23
273:23
**taken**
  45:5 75:20
  91:2 92:11
  135:8 150:1,
  14 151:5
  207:14
  216:14
  253:23
**takes**
  174:3,24
**taking**
  73:3 107:25
  147:16 217:2
**talk**
  37:21 45:23
  118:8 181:20
  184:6
  185:13,15
  187:3 188:12
  195:16 206:3
  215:24 259:2
  270:18 274:3
  275:21
  276:6,10,12,
  14,16,19
**talked**
  56:5 75:5
  185:17,19
  239:22
**talking**
  9:8 52:24

57:11 84:12,
13 101:2
168:12
170:25 173:9
178:5
185:21,22
195:3 205:7
257:20
258:24
261:10
270:22 271:5
273:17
276:16,23,24
**talks**
  145:14
  213:23
  260:20
**tallied**
  76:24
**tandem**
  233:6
**target**
  13:3,11,14
  14:1,6 22:21
  23:6 25:20
**Tarrant**
  223:25
  242:11,19
  243:13
**task**
  239:9
**tasked**
  127:20
**technique**
  79:25
**Teixeira**
  101:13,16
**tell**
  12:10 13:12
  15:12 28:15
  34:1 35:14
  42:16 52:6
  70:14,20
  76:2 85:14
  86:11 132:14
  136:14 144:1
  152:21
  156:15

Sean P. Trende
September 02, 2022

158:16,23
199:11
246:12
277:14
**ten**
  95:7,10,24
  96:2,23
  97:4,7
**ten-minute**
  45:2
**tend**
  31:1 32:22
  36:19 40:22
  103:8 132:9,
  18 138:24
  225:24 237:2
**tended**
  112:7,20
  139:4
**tendered**
  210:21
**tendering**
  8:8
**tension**
  260:1
**term**
  8:7 19:19
  40:15 59:9
  61:7,8
  161:25 162:1
  164:20 165:2
  168:5 171:8
  204:22
  256:5,7,8,
  11,15 257:9
  272:2,3,11,
  12
**terminated**
  62:21
**terminology**
  22:19 214:14
  225:21
**terms**
  40:13 53:24
  55:1 57:12
  74:8 88:3
  177:8 225:11

**terrible**
  257:19
**test**
  42:22 55:19
**tested**
  20:18
**testified**
  105:10
  157:3,6
  207:24
  228:13
  248:19 253:7
**testifies**
  161:17
**testify**
  88:10 155:7,
  14,19,23
  156:1,4,7
  157:9 158:1
  161:18
**testifying**
  88:25 199:20
**testimony**
  24:10 37:20,
  23 43:23
  50:16 87:1,
  3,4 88:8,12
  93:18 102:18
  109:1 125:7,
  15 156:9
  157:12,25
  158:3 161:16
  169:5 206:6
  221:16 237:8
  253:9 266:22
  269:24
**testing**
  267:5
**tests**
  63:5
**Texas**
  7:9 20:24
  21:3,6 48:25
  58:16 61:25
  62:17 80:5
  91:21 95:14,
  18 97:23
  98:6 99:21

100:4,15
101:2
102:16,25
103:2 105:7
107:22
111:23 114:5
115:23 116:4
117:3,5,6
118:11
130:18,19,
23,24 131:9,
18 132:1,9
140:6
146:19,23
147:24 148:4
150:21
151:13,15
158:23,24,25
159:3,16
164:20,24
165:3,6,16
169:24
170:8,14,18
171:11
172:15
173:25
177:17
179:8,13,14,
18 181:2,8,
15 183:21
184:12,25
185:5,9
192:9 193:25
194:23 195:3
196:7,12,15
202:25 203:5
205:9,17
207:1,19
208:5,6,13,
17,18 209:3
212:3 215:4
216:16 220:9
228:23
229:16
232:16
235:24
240:21
242:10 244:4
245:17

247:22 259:3
263:7,8
264:18,25
265:8,24
266:7,9,14
267:1,7
268:20
269:12,16
**Texas's**
  95:6,9
  111:14
  151:14
**Texas-
specific**
  58:22
**text**
  60:9 274:12
**Thank**
  8:14 9:10
  10:11 19:15
  31:16 32:6
  91:20 111:25
  152:4,13
  172:12
  193:19
  207:10 224:9
**Thanks**
  57:10
**theorem**
  9:3
**theory**
  49:16
**thereabouts**
  154:14
**thesis**
  101:21
**thing**
  25:4,18 37:4
  89:12 93:15
  217:18 223:3
  255:24 256:2
  258:21 261:1
  264:11 270:1
**things**
  9:2 19:6
  36:11 37:22
  42:7,11 46:1

Sean P. Trende
September 02, 2022

77:9 87:15
90:13 94:19
101:25
116:11
121:20 125:9
126:8,14,15
127:1 133:16
155:23
160:23
198:14,15
207:21
215:18
248:24 249:5
264:16

**think**
 10:3 14:21
 15:19 22:5
 31:5,16 32:4
 38:13 39:25
 41:1 42:5,13
 43:6 47:2
 50:10 51:22
 54:15,19
 58:2,8,25
 59:3 61:17
 65:20,21
 71:18 72:4,
 11 73:1
 76:11 80:25
 81:7 83:13,
 16 93:8
 101:11
 102:25 105:3
 109:11
 110:24
 112:15
 114:18 116:9
 125:19 128:4
 129:7 130:15
 133:13,14,
 15,22 134:20
 135:19
 136:12,13,
 18,21 138:12
 140:16 142:8
 144:6,8,14
 145:13
 147:14
 148:1,5

150:5,9
152:2 154:2
156:12,15,16
157:15
158:25 159:7
160:12,17
161:22
162:25
163:15
166:16
167:20,25
168:14,20
169:24 173:3
174:19,23
175:15
177:22
179:11
180:17,21
182:4 190:10
192:11
193:1,3
194:11,25
195:2 196:6,
7,10,20
197:14
199:24
200:22
201:20
203:21 204:4
205:13
213:22,23
217:4,21
218:23
221:15
222:21
223:1,6
238:25
250:17
253:12
257:25
258:21,22
259:6 260:8
261:5 265:21
269:4 270:7
271:5,9
273:25
274:24

**thinker**
 257:19

**thinking**
 114:8 198:23
**third**
 30:17,20
 31:19 32:5
 39:16 42:10
 83:20 99:10
 106:12 176:2
 274:20
**Thomas**
 268:6
**thorough**
 153:1,4
**thought**
 83:7 91:18
 115:23
 128:19
 138:19
 139:18 144:7
 180:8 185:22
 206:4 256:7
 259:10
**thoughts**
 116:15
**threatened**
 100:7 206:10
**three**
 25:6 28:13
 30:9 56:18
 57:1 107:25
 141:17
 146:9,20
 203:8
**three-peat**
 207:2
**threshold**
 14:20 15:6
 48:6,12,17
 64:15 66:25
 67:4,10,22,
 24 68:2
 217:1,16
**threw**
 61:9
**throwing**
 143:3

**ticket**
 191:7,16,25
**tie**
 62:13
**ties**
 63:8
**tight**
 225:12
**time**
 7:13 46:2
 47:12 66:16
 76:1 92:6
 115:25 116:6
 118:19
 120:22
 121:2,9
 132:22
 135:20 153:2
 159:11
 176:24,25
 178:5 190:14
 193:12
 195:19
 203:11,17
 216:24
 222:24 238:9
 258:9 277:13
**times**
 18:11 45:25
 111:16,17
 182:3,9,13
 196:8 227:10
 253:10
**title**
 98:18
**titled**
 9:12 120:2
 140:25
 151:10 170:8
 186:18
 254:25
**TLC**
 164:25
**today**
 42:1 56:3
 91:13 93:8
 155:9,18
 160:15 162:8

195:5
211:12,16,
23,25 248:19
258:9
**told**
140:16
249:16
**Tony**
211:1 232:9
**top**
29:22 60:13
80:2,18,19,
21 83:2
100:4 105:17
158:21
160:17 195:2
199:2 232:15
250:21
277:16
**topic**
102:3
**topics**
75:12
**tops**
115:24
**total**
43:12 77:12
128:24 129:5
169:15 191:9
**touch**
103:3 162:6
**touches**
184:25 185:6
**tough**
65:1
**traditional**
58:17
**transcript**
32:7
**transformed**
235:5
**translate**
18:2
**transportatio
n**
60:22

**Travis**
114:1 259:16
267:1
276:18,20
**treated**
264:6,8
**treatment**
127:24
**trend**
95:20 96:17
99:16 100:12
102:13
**Trende**
7:3,8,25
45:8 75:23
81:19 82:5
93:5,7,22
94:25 95:1,
6,19 96:7,
16,21 97:2,
6,21 98:13,
14 99:2,8
100:14
102:4,14
103:10,16
104:2,16
105:6,19
107:7
108:13,22
109:15
110:19
111:2,12,21
112:10 113:3
115:5,6,13,
17,19 116:2,
18 117:13
119:4,8,12,
22 121:23
122:21
123:12,16
125:1 126:3
127:7,13,23
128:9,10,23
129:9,18,22
130:1,17,22
131:17,25
132:11,22
133:18

134:5,24
135:10,25
136:1,16,23
137:2
138:10,23
139:12,24
140:3,9,23
141:15
142:4,10,16
145:10,17
146:6,7,18
147:2,21
148:3,25
150:3,18
193:14 201:6
207:18 220:7
227:16
228:15 232:7
247:11
250:11
253:11,22,25
254:24
258:8,13
**Trende's**
119:2
**trends**
42:1
**trendy**
124:5
**trial**
82:14 155:9
158:1
**trick**
211:3
**triple**
100:6
**trouble**
12:4
**troubled**
121:22
**troubling**
120:16
**true**
99:3,4 113:3
115:14
117:20
118:20
120:9,25

121:7
130:17,22
132:6 139:25
141:8,10
145:10
146:16
149:19 170:4
191:23
192:11 194:2
197:14 213:3
231:11
**Trump**
28:23 29:24
30:9,12,13,
16,18,24
31:4,6,7
39:15,17
40:24 41:10,
20,25 42:6,
14 44:18
77:23 80:22
81:5 83:17,
19,22 84:5,
18 85:5,7
87:12,15
146:24 171:1
174:5,6
182:10
183:22
186:15,16
190:4,20
191:5,14,25
192:22,24
195:20
205:8,10
215:12,13
217:4 221:3,
17,22 222:1,
13,21,22
223:5
224:13,16
225:1,7,9,25
234:4 235:6
237:16
259:5,8
260:2,7
**Trump's**
195:16,23

Sean P. Trende
September 02, 2022

215:25
216:13
222:15,19
223:9 225:22
226:14
227:2,14
**Trump-driven**
193:3
**Trump-favorite**
217:11
**Trump-won**
86:2 271:15
272:22
**Trumper**
222:10
**Trumpers**
222:6
**truthfully**
93:19
**try**
17:1 41:3,18
88:24 105:14
110:22
111:12
150:24
156:24
196:21
207:20
223:17
255:1,19,22
257:22
258:16
**trying**
16:24 21:5,
8,10 24:11,
13,15,22
25:10 34:25
44:24 65:13
86:22 87:24
101:23
108:19,20
109:13,22
114:18
125:16
126:14
127:3,12
128:5 164:8,

9 171:6
172:25
200:17
215:16
233:25
253:16
260:18
269:6,7
274:15,17
**tucked**
134:16
**turn**
9:11 10:12
16:12 26:10
28:14 52:5
59:8 66:1
70:21 83:3
94:25 97:19
99:8 105:18
112:1,2
113:16
118:1,2,5
120:13
124:12 128:9
131:2,3,4
133:20,21
135:25
141:14
144:17 151:2
154:17 170:6
175:2 209:14
214:15
218:12
223:16
229:14
232:15 242:8
244:2 245:15
247:20
260:11
**turned**
9:20 148:10
149:3
**turning**
58:11 217:3
229:23
231:16 235:4
**turnout**
189:3,8

205:3
**turns**
217:17
**tweet**
115:8,9,10,
11,15,20
116:2,20
139:15,16,
17,22 140:1,
3 146:12,13,
16,18 147:4,
11 205:7
258:21,23
259:1,7,10,
11,20,24,25
**tweets**
146:9
**twice**
154:6
**Twitter**
115:17
116:11
147:13
**two**
22:6 28:13
30:11,15
35:6,21
39:17 40:5
46:1 47:11
56:18,25
57:7,8 75:1,
4 98:20
106:5 110:8,
10 113:25
114:1,6,18
135:14
144:24
146:20
147:23
160:18
173:12
189:12 203:9
215:12
219:15,16
223:24
224:25
253:21
262:16 271:9

**two-minute**
90:25 149:24
**two-party**
68:15 235:7
**two-thirds**
259:4
**type**
64:12 86:24
93:11 247:14
**types**
245:13
**typically**
8:20 12:7
13:3,5 30:22
152:9

---

U

---

**U.S.**
169:11 190:8
200:13
**U.s./mexico**
184:18
**Uh-huh**
24:22 25:8
37:6 39:5
45:22 49:20
54:5 55:20
60:12 61:18
64:18 78:4,
21 81:4
84:3,20 85:9
87:17 178:2
261:4
**Uh-oh**
34:12
**ultimate**
88:23
**ultimately**
14:5 262:13
269:20
**unanimously**
192:13
**unaware**
37:24
**uncertainty**
22:14 103:1

Sean P. Trende
September 02, 2022

underground
  142:1
underneath
  172:4,5
underperforms
  191:25
underscore
  259:17
understand
  13:6 17:16
  24:23 31:16
  34:25 41:12
  42:16 44:6,
  24 53:2
  68:3,9,10
  75:24 79:23
  84:9,19
  86:22 93:13,
  20 138:6
  150:7 154:1
  159:7 173:14
  198:1 201:6
  213:1 259:9
  266:4,8
  271:5,6
  273:25
  274:15
understandabl
e
  41:23
understanding
  11:24 17:7,9
  22:3 49:2,5
  50:18 52:13,
  20 53:4,12,
  14,21 63:15
  64:12 66:13
  76:15 96:3,6
  97:5,11
  102:24
  104:6,19
  112:10
  129:9,15
  138:7 167:23
  206:7 222:9
  267:23 268:3
understood
  155:18

157:1,20
169:4
undertake
  63:7 79:19
undertaken
  65:4 105:10,
  11
United
  93:6 150:19
  215:3
units
  47:6
universe
  24:13 37:23
  83:25 88:12
  108:8
unmentionable
  256:4,7,10,
  15 257:9
unnecessarily
  248:20
unrelated
  208:24
untrue
  33:22
upper
  47:1
upper-left
  54:8
upper-right
  54:9
urban
  131:14,17,25
  132:10
urge
  73:17
useless
  237:23
user
  13:7,9 15:8
users
  165:9

───────────────
         V
───────────────

vague

87:3 89:8
143:24
202:14 240:6
272:3
valence
  194:12
valid
  71:24
Valley
  178:21 179:2
  182:14
  203:12
value
  42:20 79:13
  260:9
VAP
  15:1 48:16
  80:2,6,13
  205:14
variety
  9:9
various
  52:2 249:7
  261:11 263:2
varying
  260:9
verify
  21:13 22:1
versa
  222:23
  223:14
verses
  229:16
version
  137:3,22
versus
  127:9 171:1
  194:16 204:6
  205:16
  234:10
vice
  222:23
  223:14
victory
  215:21
view
  101:1,17

167:16 168:7
175:10 264:4
Village
  124:4,8
violated
  137:23
violation
  206:21
Virginia
  180:15 199:9
  200:12
vis-a-vis
  54:2 68:8,23
  72:22 85:13
visits
  203:15
visual
  220:25
visually
  29:11 34:18
vocabulary
  162:2
vociferously
  157:16
Voinovich
  55:23
vote
  15:6,10 19:8
  27:9 29:6,25
  30:10,14,17,
  19,25 31:4,
  6,11,15
  39:16 41:20,
  22 42:6
  43:11,12,13
  45:21 46:10,
  21 47:1,7
  51:15 68:15
  71:7 78:18
  80:21 83:24
  87:13 97:23
  98:6 99:16
  100:11
  103:17,22
  104:11,25
  120:16,17,
  18,21 121:8

122:23
123:7,23
126:2 130:6
131:10,18
132:1,2,12
138:25 139:4
140:4 173:12
175:13,19
177:19
183:22
186:14
190:12,13
195:22
197:10
215:25
216:13
221:12
222:12
223:13
224:5,6,13
225:1,22
226:2 227:2,
14 231:2,11
234:1,4
235:7
237:16,17
238:21 255:1
256:24
257:21 260:7
266:18,19
267:1
**voted**
 45:19 49:2
 123:25 174:5
 193:5 198:8,
 10 223:14
 229:11
**voter**
 196:14
 232:21 241:1
 254:4
**voters**
 59:20 96:13
 103:16,21
 104:10,24
 116:19 118:9
 120:2,10
 121:19,25

122:8,9,12,
18,23 123:1,
3,5 124:7
131:14,16,
17,21,22
132:1,2,12,
17 138:24
139:4 167:3
175:12,19
176:1 178:16
181:21
187:18,21,25
188:7,22,25
189:10 191:7
192:7,15,23
194:7,10,12,
17,22 195:7
196:12,16,24
198:2,8,10
202:19 205:3
221:21,24,25
228:22
229:3,11
230:10,13,16
233:12
234:5,14,15,
20,23
236:22,23
237:1,6
238:2,6,10,
13,18 239:13
240:3 241:5,
24 244:13
245:7,25
255:6 256:23
257:7,8,9
258:6,7
265:14,18
266:18,19
267:1,3
270:13
**votes**
 46:24 76:18,
 20,23 77:1
 78:22,25
 79:11 81:10
 124:6 130:3,
 18,23 182:24
 191:10 194:6

257:2 258:3
265:19
**voting**
 14:19 15:11
 25:12,14,17,
 20 46:12,14,
 21,25 48:9,
 11 53:5
 79:8,9,14
 95:15 96:11
 97:17 102:19
 103:11 104:1
 106:9 110:1
 116:3,8,19
 121:1 122:25
 129:5 136:5
 137:23 138:4
 158:11
 162:22
 163:1,18
 169:6 170:1
 179:6 181:9
 182:14
 183:17 188:2
 189:16
 194:22
 195:9,10
 197:6,17
 198:19
 199:4,16,17
 200:15,18,23
 202:8,12
 205:11 229:3
 237:22
 252:24
 254:3,11,12
 255:14
 257:7,10
 262:16
 265:14
 269:14
 270:14
**VRA**
 63:14 163:3
 259:14
**VTDS**
 241:9 242:6,
 20 248:7

---

**W**

---

**Wade**
 194:16
**wait**
 133:11
**waived**
 200:7
**waning**
 143:25
**want**
 17:1,16 26:8
 42:3,20
 43:10 44:14
 45:2,20
 48:21 51:25
 53:6 57:22
 59:15 75:12,
 15,24 78:18
 84:16 87:4,6
 91:7 92:4
 93:16 128:6,
 8 161:16
 185:14,19,24
 199:18
 209:10,16
 215:17 228:3
 233:2 248:20
 256:12
 258:20 270:8
 271:6
**wanted**
 36:23 55:6
 68:3 84:22
 144:20
 163:5,9
 193:9 239:10
 259:12
 275:17,18
**warrant**
 164:5
**warranted**
 131:13
**wavered**
 218:16
 219:22

**wavering**
  220:4,16
**way**
  14:17 18:3
  24:18 26:2,4
  34:17 39:21,
  24 40:2 43:6
  46:1 56:5
  60:6,17
  74:20 79:5
  81:10 94:11
  96:25 102:6
  110:6 111:10
  120:11
  121:23
  122:7,21
  123:4 154:4
  155:22 156:4
  161:22
  174:19
  175:16
  179:11
  186:14
  198:14
  218:14
  219:12 229:2
  233:6,24
  235:13
  240:13 242:6
  243:17 245:1
  246:1,6,19
  247:12,13
  253:5 255:5
  260:17
  261:5,8
  262:11,19
  263:8
  271:11,23
  272:8,12,15,
  24 276:11,13
**ways**
  25:1,6
  61:12,13,20,
  22 105:21
  156:16
  163:14
  233:22,23
  240:7 254:10

  260:21
**weakest**
  112:5,17
**wear**
  150:23
**weary**
  163:12
**Webb**
  206:11
**website**
  212:4
**weeks**
  133:1
**weighed**
  168:14
**weight**
  14:24 16:5
  78:7,10
  79:3,8
  81:10,14
**weighting**
  79:14,19
**weights**
  16:2
**went**
  34:11 41:2
  171:13
  203:13,19
**west**
  233:12 246:3
**western**
  163:7 232:24
  233:10,19
  234:5 245:25
  246:3,7,21
  248:3,13
  252:14 253:2
**Westlaw**
  55:22
**white**
  89:12,14
  96:13 112:6,
  7,13,19,20
  113:4 114:4
  116:19
  120:2,10,17,
  20 121:1,7

  123:1,7,23
  128:13,24
  129:5,11
  130:2,5,6,
  17,22
  131:10,11,
  14,15,17,21,
  22,25 132:2,
  12 136:3,6,7
  167:3 229:11
  247:17
  257:9,20
  258:1 265:14
  266:18 267:1
  269:1 270:13
  274:7 275:7,
  13
**whites**
  115:24 116:1
  117:2 122:5
  132:9,10
  184:4 198:12
**wife**
  59:11
**win**
  28:13,14
  118:12
  120:17 215:2
  216:2 228:3
  254:5 255:6
  256:1
**winner**
  180:18
  186:18
  255:20
**winning**
  256:19
**wins**
  30:14,16
**Wisconsin**
  180:3,11
**withdraw**
  216:19
  219:20
  256:17
**witness**
  8:9 55:25
  75:17,19

  91:25 92:6
  135:7
  150:10,12
  176:13
  193:12,15,18
  199:22
  207:11 258:9
**witnesses**
  161:18
**won**
  29:24 30:10,
  18,22 31:4
  39:15 40:24
  41:10,20,22
  42:6 43:10
  68:14 71:6
  80:22 81:6
  118:10
  121:16
  172:18
  188:21
  189:15
  190:4,9,18,
  21 191:2,5,
  14 215:13,14
  217:3,4,10
  221:2 222:20
  223:4,5
  224:5,6,13
  225:6,9
  235:6
  237:16,17
**wondering**
  178:10
**word**
  31:19 145:20
  160:13
  178:1,4,6
  217:5,21
  219:21 230:8
**worded**
  202:24
**words**
  29:25 31:23
  45:11 59:25
  61:6 107:25
  145:1,4
  179:1 187:4

**work**
  9:5 10:4
  12:2,22
  16:14,21
  51:21 83:8
  92:8 110:19
  111:4 133:7,
  12 147:20
  164:23 199:4
  200:14 214:7
**worked**
  200:12
**working**
  132:23
  133:10
**works**
  14:17 22:4
  24:18
**world**
  35:20 36:18
  40:4 61:10
  87:5
**worries**
  82:22
**worse**
  233:16
**worth**
  27:13 30:6
  32:23 44:19
  158:22
  159:2,16
  168:16
  223:19 236:1
  269:3
**write**
  8:1 10:14
  12:19 145:3
  151:22 152:8
  159:12
  172:24
  176:6,7,15,
  25 178:22
  179:1
  211:10,15
  219:18
**writing**
  57:15 176:18
  259:12

**written**
  12:16 14:1
  61:21 97:21
  101:4 143:4
  176:21
  177:3,4
  182:3 211:9
  260:22
**wrong**
  15:20 32:10
  33:24 52:12
  73:1 136:20
  172:22
  235:12
**wrote**
  12:23 16:20
  49:16 55:17
  57:15 63:25
  98:4 101:5
  114:7 115:10
  118:20 138:3
  139:17
  143:25 144:2
  145:16
  146:13 170:9
  171:4
  176:22,24
  177:7 254:2

———————————

**Y**

**yeah**
  14:21 23:11,
  18 32:12,13
  45:2,4 48:4
  51:14 61:22
  69:5 74:16
  75:19 87:4
  90:3 96:19
  105:11
  115:22 140:8
  149:5 154:2
  174:23 180:7
  186:6 210:5
  213:22 224:9
  231:9 233:15
  236:17,20
  238:15

  243:9,17
  250:14
  251:16 252:7
  254:7 259:6
  260:1 271:8
  272:2 275:6,
  20 277:12
**year**
  101:3 133:9
  208:2
**years**
  9:8 95:7,10,
  24 96:2,23
  97:4,7 99:15
  100:11 104:1
  118:11
  145:16
  194:23
  195:11 203:9
**Yogi**
  47:10
**York**
  25:12 110:12
  122:3 182:3,
  9,13
**young**
  132:17

———————————

**Z**

———————————

**Z-A-P-A-T-A**
  182:5
**Zapata**
  182:5,10
  190:4,9,16
  191:5,14
  192:12,16,21
**zero**
  47:20
**zigzags**
  232:25
  233:2,7